THE FREEMAN

IDEAS ON LIBERTY

Hunger and Farming in Black South Africa

Monopoly Government

Fairness Doctrine, R.I.P.

Why Public Schools Fail

JUNE 1989

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PERSPECTIVE

Little Tyrannies

For many Americans who are dedicated to personal freedom, the steady growth in the size and power of the federal government is a prelude to tyranny. To counteract this trend, many advocate the principle of "states' rights" or variations on the theme of "local control." The assumption seems to be that individual liberty is less likely to be eroded by government officials who live near their constituents.

But this assumption is invalidated by the facts of daily life. In many cases local governments in their zeal to promote the "common good" have become the willing instruments of tyranny against the individual. As a result, a visit by one's local building inspector can be as devastating as a knock on the door by an IRS agent. I can cite examples from my own experience and the experience of others in my own relatively small California city:

A few weeks after I purchased my newly built home, which is situated on a corner lot, I started to erect a six-foot fence at the sidewalk on one side of the house. I was promptly visited by a zealous emissary from the building department, who informed me that I must cease building the fence immediately because I didn't have a permit. He told me I had to prepare a plot plan of my property and a drawing of the finished fence, submit this with a fee to the building department, and wait three weeks for the planning commission to meet and pass judgment on my proposal. I asked what would happen if I just continued to build the fence, and the conscientious fellow told me I would be fined and "forced" to remove all building that had preceded the meeting of the planning commission.

Outside the city limits a vacant field at a busy intersection became an informal bazaar where people sold everything from knives to oil paintings. All of this was with the permission of the property owner, who charged a small fee from her informal vendors. When county officials discovered what was going on, they ordered the peddlers to leave because the field wasn't zoned for commercial activity.

In this same city a motel owner erected a hand-painted "Welcome" sign on his motel. A neighbor complained anonymously, and it was

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discovered that the motel owner had never submitted an application to erect the sign. He submitted one after the fact, but the Design Review Board turned it down because it added to "visual clutter." The city ordered the motel owner to remove the sign.

Had any of the above property owners not complied with local ordinances, they would have been fined or jailed or both. These local governmental agencies had turned ordinary, innocent, and basically productive pursuits into criminal activities. Variations on these scenarios are being repeated daily in towns and cities throughout the country.

Government as protector of an individual's right to live and work in freedom has been replaced by government as enforcer of rigid and arbitrary standards of esthetics and behavior. The great despotisms of the world are just larger versions of these little tyrannies.

—WILMA MOORE
Santa Rosa, California

What If. . . ?

The other day I sat down to read the newspaper, as I usually do in the morning. As soon as I read through the first section, I knew it would be one of those "what if. . . ?" days. Every now and then I'm agitated by those kinds of thoughts—what if I were in that situation? Maybe you've had them, too.

Well, on this particular day I was reading about strikes, and quotas, and South Africa, and the West Bank, and the Contras, and Congress granting aid and giving money to this and that place and passing a law for something or other. Suddenly some tremendous "what ifs. . . ?" hit me. What if the U.S. government didn't try to save the world with dollars; and what if politicians didn't keep passing legislation to cure problems they caused in the first place?

I ventured on to the rest of the paper and through the day I was preoccupied with my "what ifs. . . ?" What if our military worried only about protecting us from foreign aggressors, rather than trying to defend the rest of the world? What if we were totally free to trade with less developed countries, exchanging much-needed capital for inexpensive labor services to raise living standards in Third World countries, rather than watching Congress create "foreign aid" from tax revenues and public debt? Or, for that matter, what if foreigners could freely invest in the U.S. without the problems and restrictions of protective legislation? And what if the string-pullers on Capitol Hill finally realized that almost every time they get a bill passed, it's just one more restriction on some citizens? Sure, it might benefit a limited constituency or pressure group, but who does it hurt? Let me tell you, I was on a roll. . . and I hadn't even gotten to the deficit.

That was some "what if. . . ?" day I had. Yet, I think the bottom line for all my "what ifs. . . ?" is that I believe raising living standards and producing needed goods is an economic matter, not a concern for politicians. Living by basic, simple principles of economics makes for a stronger, healthier, and more fruitful society than any number of politicians can conjure up. Somehow the idea that someone in Washington can tell me how to work, what to eat, and who to do business with better than I can tell myself just doesn't set right. But, maybe there's something I missed and those people have a corner on what will happen in the future.

Unfortunately, my "what ifs. . . ?" probably will stay with me a long time, because I would like to understand why people choose to support political expediency and promote government interference in economic affairs. I would like to understand why people don't see the benefits of principled economic activity on the market and vote for the limitation of governmental activity. So, I'll keep reading the paper in the morning and struggling with my "what ifs. . . ?" and I'll keep dreaming of my greatest "what if. . . ?": What if we were left to hash out our own economic fate? —CARL HELSTROM

The Freeman Gets Around

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THE FREEMAN
IDEAS ON LIBERTY

Monopoly Government

by Thomas J. DiLorenzo

In theory, the goods and services provided by federal, state, and local governments are public goods—goods that will not be provided in adequate quantities by the market system because of "market failure." But in reality, most of the goods and services provided by governments are *private* goods. Governments in the U.S. provide literally thousands of goods and services in direct competition with private businesses.

Governments, however, compete unfairly. They enjoy exemption from Federal, state and local income, sales, and property taxes and immunity from minimum wage, securities, bankruptcy, antitrust, and myriad other regulations. Government enterprises can also exercise the power of eminent domain and borrow at interest rates considerably below those paid by their taxpaying competitors (especially small firms) because of tax-exempt interest payments. Their capital and operating costs are subsidized by tax revenues and, perhaps most importantly, they are often granted monopoly status by law. Thus, competition between private businesses and government enterprises is unfair.

Unfair Competition by Federal Government Enterprises

The federal government provides what many consider to be public goods, such as national defense and the justice system, but it also provides thousands of purely private goods and services. Former Senator S.I. Hayakawa of California stated in 1981: "Federal employees are currently operating over 11,000 commercial or industrial activities that the private sector also performs. . . ."[1] The Senator added: "Since the business of government is not to be in business, I ask myself why."

The reason probably has something to do with the desire to supplement agency budgets with commercial profits. As seen in Table 1, Federal agencies enter businesses as mundane as laundry work and as sophisticated as engineering and computer programming. All of the services listed in Table 1 are also provided by private firms.

As one example of unfair competition by government, consider the Federal publishing business. Although much government printing consists of publishing congressional hearings, executive branch memoranda, IRS tax forms, and other tools of running the government, much of it is commercial and, therefore, competes unfairly with private printers. The Government Printing Office (GPO) is the largest Federal publishing facility. According to the director of the GPO: "We have . . . 33 acres under our roof, 6,200 employees, of which over 5,000 . . . are in the main plants . . . and well over 100 presses. . . . We are probably the largest . . . printer in the United States." There are also "more than 300 printing plants located in many government agencies."[2]

Even a cursory look at the GPO's monthly catalog of publications reveals that the federal government competes on a large scale with private publishing companies. Consider the following ex-

Dr. DiLorenzo is the Scott L. Probasco, Jr., Professor of Free Enterprise at the University of Tennessee at Chattanooga. This article is partly adapted from his book, coauthored with James T. Bennett, Unfair Competition: The Profits of Nonprofits *(Hamilton Press, 1988).*

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TABLE 1
Examples of Commercial Occupations in the Federal Government
(as of October 31, 1981)

Occupation	Number of employees
Painting and paperhanging	10,207
Industrial equipment operation	18,061
Food preparation and serving	22,680
Plumbing and pipefitting	18,640
Metal work	25,579
Warehousing and stockhandling	39,762
Laundry work	2,131
Guards	8,193
Computer operators	10,241
Computer specialists	30,617
Engineers and architects	154,210
Librarians and archivists	9,761
Supply clerks and technicians	31,501
Mail and file clerks	23,536
Electricians	13,096

Source: U.S. Office of Personnel Management.

amples from the January 1987 catalog. *The Backyard Mechanic* "can help you save money by doing simple auto repair and maintenance jobs yourself" and "discusses ignition systems and spark plugs and guides you through a tuneup, a brake relining, a brake system flushing and bleeding, a power-brake check, . . ." and so on.

Oddly enough, the debt-ridden federal government claims expertise in financial management. In *Managing for Profits* readers are instructed in "production and marketing, purchasing and collections, financial management, taxation, insurance, and more." Also in the financial planning area is *Starting and Managing a Business of Your Own. Insurance and Risk Management for Small Business* "provides basic information in selecting insurance and in reducing risk for the small businessman." The GPO also publishes advice to the individual investor in *A Guide to Individual Retirement Accounts*, which discusses "the various savings and investment vehicles available."

The federal government may be notorious for producing barely comprehensible laws, regulations, and forms, but it offers published advice on *How Plain English Works for Business*: "twelve case studies describe how some business organizations have scored success by simplifying consumer documents."

One of the biggest areas of commercial book sales has been health and fitness, including diet and exercise books. The federal government competes in this market with such publications as *Dietary Guidelines and Your Diet*, which advises people to "maintain desirable weight; avoid too much fat; avoid too much sugar; and if you drink alcoholic beverages, do so in moderation." The federal government competes with the flourishing cookbook industry by publishing hundreds of cookbooks, including *Country Catfish*, which "describes 18 ways to serve them" and exhorts that "Catfish are great—either plain or fancy." *Getting Fit Your Way* provides consumers with "a total physical fitness program" and also "contains information on weight control and how to stop smoking." The GPO produces more than 18,000 publications, including all these books and thousands more that compete with commercial publishers. And they compete at a considerable advantage because of taxpayer subsidies and other benefits. Taxpayers pay for both the production of books and pamphlets and for the marketing as well. The GPO proudly boasts: "In addition to our mail order service, we [the GPO] maintain a nationwide network of Government bookstores."[3]

Unfair Competition by State and Local Governments

State and local government enterprises provide few goods and services that are *not* private goods. At the local level of government the major category of expenditure is education, even though education is not a public good. Private schools existed long before public schools were established in the U.S., and they still proliferate despite the competitive disadvantages they face.

At one time, there was a pretense that public schools provided a uniform education to everyone, but the great disparities that are apparent in the quality of public schools have abolished that myth. Supporters also argued that morality could be better taught in public schools, but many parents are concerned about the *lack* of morality taught in public schools, while others believe that teaching morality violates the constitutional separation of church and state. Public education is also said to increase worker productivity through skill enhancement, but that, too, is questionable

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TABLE 2
Services Provided by Both Local Governments and Private Businesses

Service	No. of Cities and Counties	% Using The Private Sector
Public Works/Transportation		
Residential solid waste collection	1,390	49
Commercial solid waste collection	1,143	58
Solid waste disposal	1,314	31
Street repair	1,640	26
Street/parking lot cleaning	1,483	9
Snow plowing/sanding	1,282	14
Traffic signal installation/maintenance	1,569	26
Meter maintenance/collection	767	5
Tree trimming/planting	1,454	31
Cemetery administration/maintenance	718	11
Inspection/code enforcement	1,588	6
Parking lot/garage operation	784	13
Bus system operation/maintenance	555	25
Paratransit system operation/maintenance	579	26
Airport operation	561	30
Public Utilities		
Utility meter reading	1,204	19
Utility billing	1,248	20
Street light operation	1,281	52
Public Safety		
Crime prevention/patrol	1,659	3
Police/fire communication	1,685	1
Fire prevention/suppression	1,520	1
Emergency medical service	1,361	16
Ambulance service	1,256	27
Traffic control/parking enforcement	1,502	1
Vehicle towing and storage	1,310	85
Health and Human Services		
Sanitary inspection	991	1
Insect/rodent control	1,059	13
Animal control	1,508	7
Animal shelter operation	1,262	14
Day care facility operation	441	35
Child welfare programs	567	6
Programs for elderly	1,190	5
Operation/management of public/elderly housing	611	12
Operation/management of hospitals	393	26
Public health programs	743	8
Drug/alcohol treatment programs	635	7
Operation of mental health/retardation programs/facilities	508	7
Parks and Recreation		
Recreation services	1,458	6
Operation/maintenance of recreation facilities	1,539	8
Parks landscaping/maintenance	1,574	9
Operation of convention centers/auditoriums	452	8

(Continued next page)

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TABLE 2, *continued*

Service	No. of Cities and Counties	% Using The Private Sector
Cultural and Arts Programs		
Operation of cultural/arts programs	707	9
Operation of libraries	1,189	1
Operation of museums	505	4
Support Functions		
Building/grounds maintenance	1,669	19
Building security	1,499	7
Fleet management/vehicle maintenance		
Heavy equipment	1,642	31
Emergency vehicles	1,560	30
All other vehicles	1,622	28
Data processing	1,471	22
Legal services	1,605	48
Payroll	1,719	10
Tax bill processing	1,320	22
Tax assessing	1,098	6
Delinquent tax collection	1,254	10
Secretarial services	1,656	4
Personnel services	1,663	5
Labor relations	1,514	23
Public relations/information	1,547	7

Source: International City Management Assoc., *Municipal Yearbook 1983* (Washington, D.C.: ICMA, 1983), p. 215.

in light of the decades-long decline in educational achievement in primary and secondary education. Private schools, by contrast, have demonstrated superior quality education despite fewer financial resources.

Moreover, the mere fact that education may increase worker productivity does not justify governmental provision of education. In fact, the opposite may be closer to the truth. If one wishes to increase worker productivity through education, the appropriate direction should be in favor of private provision of education, not public provision, given the superior quality of private schools. Thus, the reason why local governments nearly monopolize the primary and secondary education industry is not likely to have much to do with "market failure."

Table 2 lists a sample of 59 different services provided by both local governments and the private sector. As shown there, local governments are involved in many private activities, including garbage collection, tree trimming, transportation, day care, and housing. The mere existence of private sector firms in all these categories is direct evidence that they are inherently not public goods, but private goods.

It would appear that there is no *economic* justification for governmental provision of *any* of these services. The most likely explanation for governmental provision is the natural inclination among government bureaucracies to expand their domain by whatever means possible. Competing with private business is apparently an expeditious way of doing this, given that local governments have the taxing, spending, and regulatory power to do so. By using tax revenues to subsidize local government enterprises and imposing costly taxes and regulations on private sector competitors, local governments can easily dominate many industries.

State governments also are guilty of usurping the domain of the private sector. States spend

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vast amounts of money on education, highways, hospitals and health care, parks and recreation, liquor stores, and utilities—all private goods.

New York, for example, runs a transportation business, operates museums, constructs "industrial exhibits," operates sports arenas, builds parks and other recreational facilities, finances home mortgages, and many other activities. Other states are involved in the same activities.

So why does government have its hand in all these commercial enterprises? It is certainly not because the market has "failed." A more likely explanation is that government is the monopolist *par excellence*. By subsidizing its own enterprises and taxing and regulating its private competitors it can drive them from the market. Many other private businesses will not even become established in the first place. That's why privatization of "public" services is more than just a means of cutting the cost of public service provision. It is a genuine anti-monopoly policy.

For nearly a century antitrust policies have been used to persecute private "monopolies," but the real monopoly problem lies in government itself. The government's so-called antitrust policies are only a smokescreen. Under the guise of fighting private-sector monopolies, government draws attention away from the *real* monopoly problem in America—monopoly government.

One of the reasons the American revolution was fought was to escape the economic tyranny of King George, who had implemented a system of British government monopolies to fleece the colonists. That's why the privatization movement might properly be labeled the second American revolution. □

1. Senator S. I. Hayakawa, Statement on "Government Competition with Small Business," *Hearings of U.S. Senate Committee on Small Business, Subcommittee on Advocacy* (Washington, D.C.: U.S. Government Printing Office, June 24, 1981), p. 1.
2. Statement by Danford L. Sawyer, Head of the U.S. Government Printing Office, *Hearings Before the House Appropriations Committee*, 97th Congress, 2nd Session, 1983, p. 14.
3. *Ibid.*

IDEAS ON LIBERTY

What Is Seen and What Is Not Seen

Have you ever heard anyone say: "Taxes are the best investment; they are a life-giving dew. See how many families they keep alive, and follow in imagination their indirect effects on industry; they are infinite, as extensive as life itself."

The advantages that government officials enjoy in drawing their salaries are what is seen. The benefits that result for their suppliers are also what is seen. They are right under your nose.

But the disadvantage that the taxpayers try to free themselves from is what is not seen, and the distress that results from it for the merchants who supply them is something further that is not seen, although it should stand out plainly enough to be seen intellectually.

When a government official spends on his own behalf one hundred sous more, this implies that a taxpayer spends on his own behalf one hundred sous the less. But the spending of the government official is seen, because it is done; while that of the taxpayer is not seen, because—alas!—he is prevented from doing it.

—FREDERIC BASTIAT,
Selected Essays on Political Economy

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Shipwreck Legislation: Legality vs. Morality

by Gary Gentile

Law is a reflection of society's code of morality.

It is universally agreed among the cultures of man that murder, rape, and other crimes of assault need be dealt with severely, and it is the primary purpose of government to protect its citizens from wanton abuse and foreign aggression.

As civilization becomes more complicated, it requires finer distinctions in legal process, and more exact definition of transgression against individual rights. The Ten Commandments were a good starting point for biblical man, but the evolution of society has provoked an evolution of the law that rules it. Since the latter is dependent upon the former, it necessarily lags behind the cultural ethic, and often works in direct contradiction to the precepts it is supposed to support.

Admiralty Law and Salvage

That all property is owned by someone seems a simple statement. Yet there comes a time in the existence of every piece of property when its ownership no longer can be validated. Some things are discarded, some abandoned, some lost, and some stolen.

Items thrown away can be legally and rightly picked up by anyone discovering them: trash pickers abound in every community, trucking away old furniture for resale, broken appliances for parts, newspapers for recycling. People are glad to have those things taken. Likewise, abandoned automobiles are towed away in order to clear the streets for traffic. No one complains, because these articles have no owner.

On the other hand, if my car experiences mechanical difficulties on the highway and I am forced to leave it to seek help, no one may take it in my absence, or help himself to its parts. By separating myself from my possessions, I have in no way given up my claim to ownership. On the sea similar rules apply, although with some necessary distinctions.

Despite beliefs to the contrary, a ship abandoned in peril is not without proprietorship. Those on board forced to relinquish control of their vessel do not give up title, any more than I do with my car on the road. On the other hand, while a disabled vehicle is in no danger from the elements, a crippled ship is at risk of wrecking or sinking, a condition which significantly decreases its value to its owner, perhaps to nothing. In this case, great latitude is permitted in the common law of salvage to encourage salvors to rescue the vessel and any floating debris from otherwise total loss.

The salvage firm makes an investment from which it can recoup its expenses only upon successful completion of its task. The adage in the business of "no cure, no pay" is a curt summary of the hazards of marine salvage. And, since the original owner of the imperiled ship would have lost everything but for the intervention of a ready and skillful outfit willing to take a chance on eventual profit, insurance syndicates and admiralty courts are generous with salvage awards. If they were not, it would not pay salvage firms to keep tugs and crews on alert. In the end, it is the

Gary Gentile, a professional diver, writer, lecturer, and photographer, is the author of several books, including Advanced Wreck Diving Guide *and* Shipwrecks of New Jersey.

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best way for underwriting agents to reduce their losses. The owner, it is understood, receives full payment to the limit of his coverage.

Taken a step further, even should the ship sink, the owner is no more dispossessed of his belongings than I would be should a rain storm surround my car with a puddle. The depth of water does not transfer title of either the ship or its cargo to an enterprising profiteer, and one who removes goods or ship's appurtenances at this stage is wrongfully relieving another of his property. Neither does a disaster taking place in international waters sanctify such action—being out of reach of a law-enforcement agency does not imply that one is beyond the bounds of morality. Theft is theft, despite venue and without gradation.

Eventually, however, property may be legally abandoned. This occurs first when the insurance underwriter concludes that the ship and cargo are not recoverable with any degree of economic feasibility, and voluntarily relinquishes ownership. At that time anyone can lay claim and attempt salvage—at his own expense, and without any obligation or responsibility incumbent upon the original owner.

Barring this, a lost or sunken ship becomes "derelict" when sufficient time has passed during which the owners have shown no intention of recovery. In the navigable waters of the United States, this period is 30 days. In international waters, the duration is somewhat nebulous. However, it is at least as long as the settlement of insurance claims. But when in doubt, the underwriter should be contacted. No response to the query can be cited as an indication of abandonment.

Within days of the loss of the *Marine Electric* off the Maryland coast in 1983, a local diver took it upon himself to perform light salvage (removing valuable electronics), claiming the ship was abandoned. Meanwhile, the insurance company was investigating the cause of sinking and the possibility of total salvage of the vessel. The actions of the local diver hindered the overall examination by the real owners. This is equivalent to a street gang's removing the tires from my car while I am gone for help, or while the police are investigating a traffic accident.

No thought was given to the rightful owner, and the myth that anything lost at sea immediately becomes the property of the finder is perpetuated by the mentality of people who know that the coin can never be reversed. That is, they will never own a ship, and can never be on the losing side. So, they try to believe that they have a right to take something which does not belong to them.

In keeping with the basic premise of admiralty law, "A claim for a salvage award requires that three elements be shown:

(1) A maritime peril from which the ship or other property could not have been rescued without the salvor's assistance.

(2) A voluntary act by the salvor — that is, he must be under no official or legal duty to render the assistance.

(3) Success in saving, or in helping to save at least part of the property at risk."

Admiralty salvage laws have been enacted with much forethought as to the justice of such situations, and have been working justly for hundreds of years.

Who Owns Abandoned Shipwrecks?

Wreck diving isn't new. It goes back to before the time of Christ, when salvors practiced breath-holding to recover goods from sunken merchant vessels. They were paid according to working depth, much the same as today.

As long as man has been plying the waves he has been losing ships. And as long as valuables have been lost, divers have been willing to hazard the risks to recover them. Today, with increased technology, the danger has been reduced to an inconsiderable level, and there are millions of divers exploring the oceans. Not all of them are interested in hard-core salvage, but hardly any can conceal a certain degree of fascination with the lore of shipwrecks.

Add to this man's insatiable desire for possession, his fascination with the collection of rarities, his predilection for accumulating wealth and garnering mementos of his accomplishments, and we have an instinctive urge to assemble and exhibit the fruits of man's labor and to vaunt his prowess. Souvenir shops thrive on these basic human traits.

Man underwater continues to be the same.

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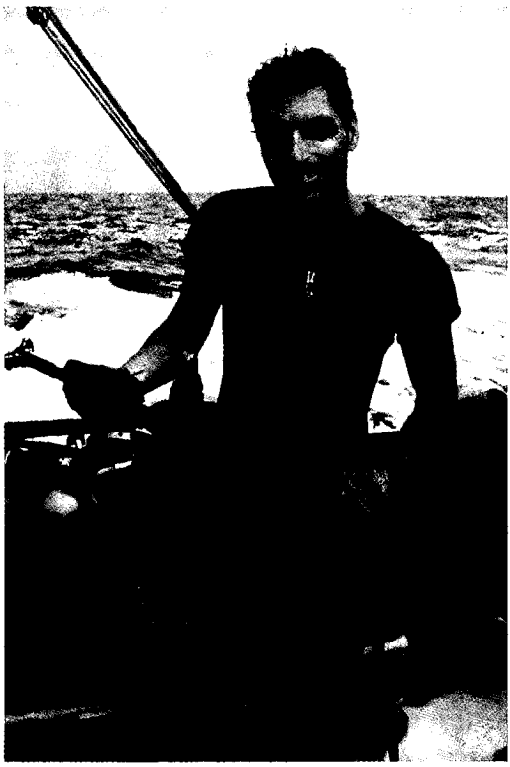

Author Gary Gentile

From the reefs he collects shells, from the wrecks he collects artifacts. But what right does he have to do this?

It already has been shown under what conditions a shipwreck may become the spoils of the finder, yet there are mitigating circumstances where this is not true, as well as times when the finder's rights are usurped by government.

U.S. military vessels are never abandoned simply through the passage of time: they must be officially stricken from the Navy list. This is the procedure when a ship is scrapped, or when it is sunk and the Navy has completed or decided against salvage. Otherwise, they remain as fully commissioned ships of the fleet, a kind of limbo status that grants immunity from foreign encroachment. In such cases each vessel technically becomes a little piece of America, wherever it may lie, a steel monument honoring the dead, and is as sacred as the Arlington National Cemetery. This is also true of foreign, even enemy, ships lost in U.S. waters.

Of course, there is nothing wrong with visiting these grave sites—as there is nothing wrong with visiting the war graves at Arlington. But differences of opinion arise when the site is disturbed. Removing bones and skeletons from a shipwreck is equivalent to grave robbing, say those who sanctify dead bodies. Recovering parts of the ship is like dismantling Arlington's fences and tombstones, say others. For some, even touching the rusted hull is like sticking your hands into the earth over a coffin. There are as many different modes of thought as there are people, including those who believe that respect for the dead is more a matter for the heart, and how one feels, than the location or condition of human remains. But this is a matter of philosophy.

The analogy breaks down when it is extended to include the thousands of nameless freighters, tankers, and sailing vessels of old. Some would have us treat every sunken ship as the final resting place of anguished human souls, and think that nothing should be disturbed. This is something like leaving every crashed car at the site of its roadside collision.

Territorial rights extend in most countries to three miles, a distance left over from a time when defensive shore batteries had limited effective range. Thus, a foreign vessel could approach enemy shores no closer without fear of being fired upon. In the U.S., the states are granted dominion over this area, while up to 12 miles is the contiguous zone under Federal control. The 200-mile economic zone is designated to keep foreign nations from fishing off American reserves. All inland lakes and waterways are state controlled.

A curious situation arises in the U.S., however. Unlike a communist society in which all land, indeed everything that exists, is held by the state, the Constitution of the United States guarantees respect for property rights. This is the basis for a free, capitalistic society: the individual maintains control over his possessions, earns the wealth that is the fruit of his labors, and retains ownership of all his discoveries, inventions, creations, and finds.

This last point is covered under the "law of finds," granting to the finder title to found property which falls, for whatever reason, under the heading of abandoned property. The law reads: "The general rule in the law of finds is that the determination of the finder's right to abandoned property is unaffected by the ownership of the land on which the property is found." In other words, a prospector who locates gold on public land stakes a claim and becomes the owner. By

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the same token, if he happens across abandoned property, he still can take possession. But a problem *does* arise concerning ownership of the land.

The Diver vs. The State

Let us delve into some actual court cases to perceive how the legal system is handling specific circumstances.

In the much publicized case of *Treasure Salvors Inc.* v. *Unidentified, Wrecked and Abandoned Sailing Vessel*, 1981, the state of Florida confiscated all artifacts recovered by treasure hunter Mel Fisher from the site of the *Atocha*. State officials ignored the fact that the wreck wasn't within state jurisdiction: it was beyond the three mile limit. Instead, they issued warrants for the seizure of all property Fisher retrieved from the seabed, without offering any compensation. It took years of costly litigation before a Federal court finally ruled that "title to abandoned property vests in the person who reduces it to his or her possession."

In *Klein* v. *Unidentified Wrecked and Abandoned Sailing Vessel*, 1985, the issues were more complicated. Klein accidentally discovered a shipwreck while diving in Biscayne National Park. Subsequently he recovered artifacts, and brought action to confirm his title to the wreck and its cargo, or at least to gain a salvage award for his efforts. The judges hearing the case filed dissenting opinions.

On the one hand it was found that, first, since the United States was "the owner of the land on and/or in which the shipwreck is located, it owns the shipwreck." Second, despite the fact that the Park Service was unaware of the location or even of the existence of the wreck, "it was certainly capable of 'rescuing' the property at that time without the plaintiff's assistance." Third, and most valid, "The articles removed from the shipwreck site were not marked or identified so as to preserve their archaeological provenience," and "the plaintiff's unauthorized disturbance of one of the oldest shipwrecks in the Park and his unscientific removal of the artifacts did more to create a marine peril than to prevent one."

On the other hand, it was admitted that "the government's argument that no marine peril existed ignores the reality of the situation," since the wreck "is still in peril of being lost through the actions of the elements," and that the "plaintiff performed a highly valuable service simply by locating the shipwreck, and should be compensated accordingly."

In *Frank Chance, Paul Chance, and David Topper* v. *Certain Artifacts Found and Salvaged from* The Nashville *a/k/a* The Rattlesnake, 1984, the three plaintiffs located the Civil War sidewheel steamer on a sand bar in the Ogeechee River. They applied to the state of Georgia for an excavation permit. Request was denied. Plaintiffs performed diving operations anyway, until caught and ordered to cease and to turn over all recovered artifacts.

The court agreed that "under general finds principles, it is well settled that in a suit between competing salvors the first finder to take possession of the lost or abandoned property with the intention to exercise control over it acquires title." However, their claim to ownership was weakened by the court's admonition that their argument did "not justify his entering upon the property of another without permission," and that "backpackers and hikers must often obtain permits before being allowed access to certain of our national parks and forests, even though that land is public and not private." In addition, "When personalty is found embedded in land, however, title to that personalty rests with the owner of the land."

These are sticky problems for the courts because they are enjoined to make a distinction between the law of finds and property laws, where embeddedness was originally intended to include mineral rights. Rulings can go either way, depending upon the circumstances. For example, if someone loses a wallet on your front yard, you don't necessarily assume ownership—it can go to the little boy who finds it. But, if he has to dig up your lawn to get to it, you can claim it as part of your property. Also involved is the adjudication of trespassing.

Contrary to the precepts of a free society, some states are setting themselves up as private landowners in order to appropriate publicly owned property. Where a shipwreck lies at the bottom of a river, they claim sovereignty in the absence of Federal regulation. The rationale is that all waterways are state owned.

Some states are using laws passed for one purpose to further ends which were not intended in

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the initial enactment. Pennsylvania, for example, will arrest people caught picking up exposed Indian arrowheads on *privately* owned land, such as a farmer's field. This is certainly getting out of control. After all, the purpose of government is to govern, not to own. That is for the individual.

As a ploy for getting laws passed, state legislatures don't actually prohibit the salvaging of wrecks on supposedly state-owned land, but include the seemingly innocuous requirement of a permit. However, once the states have control, as in the *Rattlesnake* case, they can simply deny the permit. Thus, the people are tricked into giving away their rights, expecting due process which is not forthcoming. The states are taking control of the people, instead of the people being in control of their states.

Moving to the beaches and three-mile territorial waters, we find further abuses of the common law of salvage, where coastal states enact local laws to pre-empt admiralty law in an attempt to seize the hard-earned gains of treasure salvors —*after* they have found treasure.

It is interesting to note that in no instance has a state actively searched for a treasure ship. Perhaps they understand too well the immense effort and tremendous cost involved. Instead, they hug the sidelines waiting for a businessman to make a successful find, then pass laws to take away the rewards of his investment. (Remember the *Treasure Salvors* case.) This is like taking over a manufacturing firm after it has started earning profits. It would appear that right and wrong do not necessarily have anything in common with what is legal or illegal, despite constitutional guarantees of inalienable rights.

Recently, while the states have attempted to annex private property, Federal court judges have wisely and judiciously decided otherwise. The *Cobb Coin* case (1981) cost its plaintiffs a small fortune in defense, but the 50-page legal decision in the Federal Supplement examined every angle of Federal maritime laws. District Judge James Lawrence King studied the history of the 1715 plate fleet lost in a hurricane off the Florida coast, and disagreed with the state's claim of ownership, thus:

"The State of Florida is attempting to interfere impermissibly with an ongoing federal matter. Such usurpation of the proper jurisdiction of this Court cannot be tolerated."

"Florida seeks to claim ownership of the wrecks through legislative pronouncement."

"The right so to search is a fundamental adjunct to the American principle that the high seas be freely navigable to all seafaring persons to navigate for pleasure or commerce, or otherwise to ply their trades."

"This country, throughout its existence has stood for freedom of the seas, a principle whose breach has precipitated wars among nations."

"When property has been abandoned or become derelict, anyone may put himself forward as salvor."

"The requirement that one be licensed to be able to explore the ocean for abandoned property at the bottom contravenes the maritime law principle that potential salvors be free to explore the open waters."

"Florida's system of fixed salvor compensation conflicts with admiralty's flexible method of remuneration based on risk and merit. . . . The consistent policy underlying admiralty's salvage awards is that salvors will be liberally rewarded."

Judge King has written the most inclusive and exhaustive monograph in the history of shipwreck legislation, and has gone to great lengths to weigh both the legal and moral aspects of the case. His conclusions fall back to man's inviolable rights as stipulated by the Constitution of the United States, and will be precedented material for generations to come. The purpose of salvage law is to encourage salvage in order to "return to the mainstream of commerce goods otherwise buried beneath the sea."

He has stated flatly that shipwrecks rightly belong to those who find them, work them, and bring back their treasures in whatever form to the mainstream of human awareness.

Plight of the "Wreckless" Diver

Despite this costly victory for individual rights, schemes abound that seek to overthrow the status quo and to apply state dominion over all shipwrecks, whether within territorial waters or without, and to include locations where even the U.S. has no authority.

The intended victims of these machinations are not just big-time salvage operators, but millions of sport divers as well. Most are unaware of

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the spears being thrust at them, and those who are don't have the backing or financial resources to protect their interests. Thus, a succession of Federal bills has been in the offing to revert maritime salvage regulations to the custody of the states who, it has already been shown, are not sufficiently responsible in matters of individual rights.

The ploy being used is the "preservation of cultural resources," a phrase with a highly debatable meaning, depending on who is using it. Perhaps better understood is "national heritage," being that part of history relating to the founding and growth of a country.

Historic sites such as buildings and battlegrounds are set aside, with interpretive centers erected nearby to guide visitors on a tour of the past. The Liberty Bell, Betsy Ross's house, and the trenches and bastions of Antietam, where so many soldiers lost their lives, serve as examples of the War of Independence and the American Civil War. Pride and tradition can be viewed at Williamsburg. The fact that tourists flock to these places is proof of the interest they maintain.

Yet, not every battlefield has been preserved, not every ancient building still stands, not every vestige of the past has survived the trash heaps. There is neither the room, nor the money, nor the concern to preserve everything. All we need are examples.

Despite claims to the contrary, the same applies to shipwrecks. Not every barge or tramp freighter has historic or cultural value. Yet the plethora of anti-shipwreck bills continually in Congressional hearings are implicitly all encompassing, and seek to put in the province of local authority every shipwreck in navigable waters, off coastal communities, and those outside the jurisdiction of the United States. This is a gigantic number of wrecks: over 4,000 off the New Jersey coast alone. What are we to do with them all? And why preserve a sunken liberty ship when some of them still ply the seas, or are being scuttled as artificial reefs?

The question is not whether we need cultural resources, but how many do we need? And how much are taxpayers willing to pay for them? While some don't like to put a value on history, a modicum of practicality must be applied. We cannot preserve every old wreck just on the chance that a previously unknown piece of information may be retrieved from it. How important is it to the general public to learn how many strakes a Spanish galleon has, or whether the chine was curved? (What is a strake? What is a chine?) Certainly, knowledge of this kind is not going to alter the course of human events, or find homes for the needy, jobs for the poor, and clothes for the destitute. We live in an uneven society, and the merit of everything must be weighed in context.

Free enterprise is the American way, the basis on which this country was founded. Resource management needs to do more than preserve; it needs to utilize.

The locations of most major historic shipwrecks are known through the efforts of speculators diving and doing research in their spare time, and at their own expense. To confiscate a shipwreck after such diligent work is criminal. If you borrowed heavily to buy the materials for your dream house, then built it yourself to your own specifications, you would not expect the government to take it away on the pretext that it was too beautiful for one person to enjoy, and should become public property. Why should a person's claim to a shipwreck be any different? The individual should not be made to suffer at public expense, as stipulated in Amendment V of the Bill of Rights.

At the same time, archaeologists have a valid concern that valuable information is being lost due to unprofessional salvage. To quote again from the *Klein* case: ". . . plaintiffs have not taken adequate steps to ensure conservation of the artifacts. While some artifacts have been placed in holding bins, the water in these bins has remained unchanged, which is detrimental to the artifacts. Further, uncontradicted testimony revealed that many items not currently stored in holding cells are piled in the plaintiffs' backyard where they are subject to random and deleterious exposure to the various elements."

Yet, while we abhor on a collective level the loss of these interesting artifacts, we lose much more by abrogating individual rights.

Certainly we need to preserve for our children some of the memories and mementos of our past, but does this mean that all Civil War buffs should have their collections of guns, bayonets, uniforms, and badges confiscated in the name of the public?

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Several years ago when I attempted to present my entire collection of thousands of recovered shipwreck artifacts to a maritime museum, I was met with a stern refusal. It was not a matter of capital expenditure or space allocation, but simple apathy. They had no interest whatever in preserving or displaying our underwater heritage.

The message is clear: museums are overstocked and public support is lacking. Museum basements are crammed with packaged items for which there is no display space. Consider the case of the New York museum which recently discovered in its vaults an Egyptian mummy still in the crate, waiting for over 50 years to be unpacked.

Public institutions have no need to collect more artifacts, and they have no place to keep them. Why not put them in private hands? They are just as valuable there, are more easily maintained, and they will have been returned to those people who, by their willingness to search for them, collect them, and buy them, demonstrate the most interest in their history.

To put things in their proper perspective, within the framework of the principles of this country, it is contrary to the public good to put any shipwreck or salvage operation under any form of government control, either Federal or state.

Hope for the Future

The sea is a sacrificial element: a bath of corrosive chemicals, an armory of hungry marine organisms, a morass of shifting sand, the site of toppling currents and destructive storms. Man's carefully crafted structures and products soon fall prey to the whims of nature, which seek to reduce his handiwork to the substance from which it came.

The truth of this is obvious to anyone who dons a mask and views his first sunken wreck: he sees not a proud, shiny ship as it looked sliding down the ways, but a battered hulk vastly overgrown with coral and barnacles. From the day a ship is launched the deterioration begins, and it ends only when nothing is left. Every moment it remains in the water, man's maritime heritage is being relinquished.

There is only one solution for ultimate conservation—removal to a controlled environment. To paraphrase a real estate admonition, the best time to remove an artifact was yesterday; the next best time is today. It might not be there tomorrow. How best to meet the aims of scientist and layman, adventurer and armchair follower, conservator and souvenir collector?

Emphasis must be made toward quick recovery in some cases, plodding archaeological methods in others. The most credible way to invoke civic responsibility is to settle on the standard that best represents the American way: money.

Archaeologists get paid for salvaging shipwrecks—why then should treasure hunters be treated any differently? Or sport divers? The fundamental law of salvage is to encourage it by offering rewards commensurate with the amount of time, effort, and money invested, and with the value of the property regained. And, as Judge King noted, "every day lost in the salving effort means fewer artifacts recovered for the benefit of society."

While the issues are complicated, one thing is evident: individual property rights in a free, capitalist society must be maintained to uphold the integrity of that society. Legislative action should not take away those rights, and enacting laws that put one group at the disadvantage of another is not within the bounds of freedom for all.

Ultimately, what we need is less government intervention and more human involvement. □

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Why Public Schools Fail

by James L. Payne

The 1980s have not been kind to supporters of public education in the United States. Early in the decade came evidence of the shortcomings of the public schools from the massive 60,000-student "High School and Beyond" survey. As sociologists James Coleman, Thomas Hoffer, and Sally Kilgore summarized this study of U.S. secondary education, "students in both Catholic and other private schools are shown to achieve at a higher level than students in public schools." Their overall finding was that, controlling for social and demographic factors, students in private schools were one full year ahead of public school students.

Now, an exhaustive study by political scientists John Chubb and Terry Moe, published in the December 1988 *American Political Science Review,* documents the theory behind this difference. Private schools are better, say Chubb and Moe, because they are better organized to deliver quality education.

Private schools face a market test: If parents and students aren't satisfied, they leave the school and stop paying tuition. This propels private schools to structure themselves so they can deliver a better product. When a public school starts deteriorating, on the other hand, the tax monies keep coming in. Hence inefficient arrangements persist.

What are the patterns of successful management that the private schools have adopted? From their survey of 500 schools, Chubb and Moe document how the private schools differ from the public ones. First, in private schools, the higher, distant authorities like boards and supervisors have less power. In the public schools, the school boards and supervisors try to micro-manage the schools—leaving principals and teachers frustrated. This contrast, by the way, holds up even for the Catholic schools: The higher ecclesiastical authorities meddle less in their schools than public school boards and supervisors do in theirs.

Another difference is that private schools have more flexibility in personnel policies. The procedures to fire someone are less complex and take less time. Thus private school managers can more easily discharge unsatisfactory personnel. Furthermore, private schools are more focused and coherent in their orientations. Different private schools may offer different approaches, but within each school, Chubb and Moe found more clarity on goals and less disagreement among the staff than prevail in the typical public school.

Another key difference is with the principals. As documented by Chubb and Moe, the private school principals have more teaching background than public school principals. They are less interested in administrative duties than their public school counterparts, and more interested in educational philosophy. Also, private school principals are much less likely to be seeking career advancement. The result of these differences is that private school principals are educational leaders. This is less the pattern in the public schools where principals, hemmed in by higher authorities, regulations, and unions, tend to be seen as bureaucratic managers.

With the principal given so much authority in private schools, what happens to morale and staff

Mr. Payne is an independent political scientist who lives in Sandpoint, Idaho.

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UH OH! I DON'T LIKE THE LOOKS OF THAT!
PUBLIC SCHOOL
DRIVE THRU WINDOW
PRIVATE SCHOOL
OPENING SOON! READING WRITING ARITHMETIC
COPLEY NEWS SERVICE

relations? To hear the unions tell it, without the government and union "protection" found in the public schools, private school teachers must lead a miserable life. Well, it isn't so. Chubb and Moe found that the work context is more rewarding for a teacher in a private school: principal-teacher relations are better; teacher-teacher relations are more cordial and more supportive; teachers have more influence in every phase of the school, from choosing texts and deciding what to teach to establishing standards for discipline and homework. Private school teachers "feel more efficacious than public school teachers. Unlike their public counterparts, they do not believe their success is beyond their control, and they do not feel it is a waste of time to do their best."

In monetary compensation, private teachers lag behind. This, say Chubb and Moe, is perfectly understandable: "Private school teachers are trading economic compensation and formal job security for superior working conditions, professional autonomy, and personal fulfillment. Public school teachers are doing precisely the opposite."

What the unions and the politicians have overlooked is that job satisfaction for teachers depends on having the flexibility to accomplish the mission of education. The regulations and restraints that enmesh the public school are undermining everyone's morale. So even though we are pouring more and more money into public schools, the quality goes down.

Of course, there are some good public schools with effective programs. What the Chubb and Moe study gives is the overall, nationwide pattern. And that picture clearly shows that the lesson of the market applies to education, too: Where consumers are free to choose, suppliers organize themselves to deliver a superior product. □

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Fairness Doctrine, R.I.P.

by Jorge Amador

On August 4, 1987, the Federal Communications Commission (FCC) repealed most aspects of the "Fairness Doctrine," the regulation requiring broadcasters to cover contrasting views of important issues. With the exception of questions that are to be decided by voter referenda, Fairness Doctrine enforcement would stop.

It was the end of the civilized world, to hear some react to the prospect of unregulated debate. Without the Fairness Doctrine, predicted one Congressman, "Candidates would lose the right to reply, parties out of power would not be able to respond, radio stations could allow supporters of one candidate to dominate the news, and local and state ballot issues could no longer be covered." "I am concerned that . . . broadcasters could use the public airwaves as their bully pulpit," said another. "They could every day pound away at their point of view, with absolute, total disregard to the other point of view."

The national director of Americans for Democratic Action simply warned that "The public would be considerably less informed if the Fairness Doctrine is repealed." Supporters twice passed bills in Congress to make the FCC regulation into law, only to be frustrated by Presidential veto.

And yet, nearly two years later, the sky has not fallen. Radio and television stations did not suddenly become vehicles for one-sided debate. The opposition party is still getting its weekly reply to the President's Saturday radio message. Election-year coverage clogged the airwaves with news and views about candidates, conventions, and issues.

However, the new administration may turn out less hostile to the Fairness Doctrine. A Federal court has been asked to review the FCC's decision to abolish the doctrine. Some background will help us understand why the old doctrine may yet rise out of its coffin.

"A Façade of Pious Theories"

The Fairness Doctrine was a cornerstone of government regulation of broadcasting. Ernest Hollings, the U.S. Senate's most eloquent proponent of the Fairness Doctrine, identifies four assumptions underpinning broadcast regulation:

1. "A valuable public resource, the electromagnetic spectrum, remains scarce relative to demand; broadcast channels are limited, despite the introduction of new video and audio services."

2. Congress in the Communications Act of 1934 "has chosen a system where a select few are licensed to utilize the broadcast spectrum in exchange for a commitment to operate in the public interest as public trustees."

3. "The doctrine has permitted those who do not own broadcast stations to have an opportunity to participate in important public debate and has provided the public with a greater range of views upon which to make informed decisions."

4. The doctrine is simply "no more than good journalistic practice that does not chill the speech of broadcasters."

Government control over broadcasting is premised on the idea that the spectrum is a limited natural resource which many more people

Jorge Amador is a freelance columnist and editor of The Pragmatist, *a current-affairs commentary.*

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want to use than it can physically accept. Without regulation, users will interfere with each other's signals and render the whole medium useless. Hence government must step in to decide who gets to broadcast; to narrow down the field, it conditions broadcast licenses on the applicant's willingness to serve the "public interest, convenience or necessity."

Around this logic has been spun a web of justifying mythology. "Before 1927, the allocation of frequencies was left entirely to the private sector, and the result was chaos," wrote Justice Byron White in the Supreme Court's 1969 decision, *Red Lion Broadcasting* v. *Federal Communications Commission*, upholding the Fairness Doctrine. "Without government control, the medium would be of little use because of the cacophony of competing voices, none of which could be clearly and predictably heard."

Fairness Doctrine advocates are better theorists than historians. As one author put it, "to a large extent" broadcast regulation "serves as no more than a façade of pious theories." [1]

Contrary to Justice White's assertion, spectrum allocation has never been "left entirely to the private sector." Before 1927—when the Federal Radio Commission was established—frequency allocation was in the hands of government, and the result was indeed chaos.

Almost from the beginning the story of broadcasting largely has been one of market pressures slowly advancing against attempts to limit by decree the voices speaking through the airwaves.

The Radio Act of 1912

As radio's possibilities for mass, long-distance communication began to be understood, the federal government assumed control of the airwaves. In 1912, Congress passed and the President signed the first Radio Act. The Secretary of Commerce and Labor was empowered to assign frequencies and hours of operation; operators were required to pass an examination to obtain a license to transmit. Only U.S. citizens were eligible for licenses.

The Radio Act seemed necessary because the Navy complained that amateur enthusiasts were sweeping through the frequencies and interfering with transmissions between ships and onshore installations. It was the era of radio experimentation; the spectrum was a newly opened frontier where explorers roamed and the claims of settlers went largely unrecognized. Before long the government claimed the frontier for itself.

During World War I, the Navy seized or shut down all private radio operators, ostensibly on security grounds. Comfortable with the arrangement, following the war the Navy asserted that radio was a "natural monopoly," and that this monopoly should as a matter of course remain with itself. Navy Secretary Josephus Daniels argued that it would "enable the Navy to continue the splendid work it has carried on during the war," and that "we would lose very much by dissipating it and opening the use of radio communication again to rival companies." Navy Commander S. C. Hooper allowed that "either the government must exercise that monopoly by owning the stations or it must place the ownership of these stations in the hands of some one commercial concern. . . . " [2] The Navy did not get its way. But when the government did begin to allocate frequencies to private operators, it did so in a manner almost guaranteed to create "chaos."

The new commercial radio industry burst onto the scene in 1920-22. In the first six months of 1922 alone, the Commerce Department issued 354 new broadcasting licenses. But, difficult as it may be to believe today, they were all assigned the same frequency, 833.3 kilohertz!

After confining them to the same channel, the government left the stations to work out time-sharing arrangements among themselves to avoid interference. Remarkably, for a few years they were able to. "When the Bamberger department store inaugurated WOR in Newark early in 1922," writes broadcast historian Erik Barnouw, "it quickly arrived at a treaty with WJZ [an older station]. On one day WOR would have sunrise to sunset, and WJZ the remaining hours; on the following day the arrangement would be reversed, and so on."

As a result, "The schedule became a checkerboard of short time patches. Some stations had an hour or two during the week. In Los Angeles, twenty-three stations shared the channel." Not surprisingly, "New arrivals were increasingly resented by earlier stations." [3]

Local stations, deferring to listeners' requests to hear stations from other cities, agreed among

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themselves to remain silent at certain time slots. The practice became known as Silent Night. However, as the commercial value of radio time grew, so did the pressure to remain on the air, and Silent Night was abandoned in 1927.

The Commerce Department only reluctantly opened new channels to relieve the artificial congestion. In the summer of 1922, a second band was opened for broadcast at 750 kilohertz. To escape the clutter, some stations attempted to broadcast slightly above or below the assigned frequencies, but this was not tolerated for long.

Secretary of Commerce Herbert Hoover, who proclaimed the air "a national resource to be guarded," resisted proposals to treat channels as property that individuals could own, sell, and buy. Congress backed him up in 1926 with a joint resolution to require licensees to sign a waiver of property claims in the spectrum. However, the same year a Federal court ruled that the government did not, after all, have authority under the 1912 Act to regulate a station's hours, power, or frequency.

The industry was thus left in an intolerable situation. Broadcasters could not defend themselves against others intruding on their signals, yet the government would not act to prevent interference. The frontier was kept open to foragers and wanderers at the expense of homesteaders.

After encouraging this chaos on the air, government offered itself as the savior. In the Radio Act of 1927, Congress declared unequivocally that the airwaves "belong" to "the people." Instead of a no-man's land, the spectrum became public property. Regulators were given new powers to deny or revoke licenses; the landlord would decide which peasants got to use the newly established manor.

Artificial Shortage

Like any other natural resource, spectrum space is not unlimited. But government has made it more limited. "Whatever scarcity there is for commercial broadcasting and other private uses of radio is partly a man-made problem whose dimensions are defined by the executive branch." [4]

For decades the government has reserved for itself a large portion of the spectrum, which it has kept out of the reach even of regulators. Section 305 of the Communications Act exempts from the FCC's jurisdiction all "radio stations belonging to and operated by the United States." As late as 1977 government retained exclusive use of more than one-half of the spectrum, while another one-fourth was shared between government and private users. By 1925, Hoover was already declaring that "all wave lengths are in use"—all that the government would part with, that is. Since then the number of broadcast outlets has increased twentyfold. During the Carter administration the shared government-private spectrum rose to 40 percent; the frequencies available to private users, to only 35 percent.

The Federal Radio Commission, established following the Radio Act in 1927, set out to eliminate 164 of the 681 stations then in operation, even as technological developments undermined its rationale. "During 1930, broadcasting experienced 'almost a complete revolution in the type of equipment used' " which enabled stations to keep closer to their frequencies—theoretically permitting more stations to operate without interfering with each other. [5] Nevertheless, the FRC's campaign proceeded apace, and by 1932 at least 77 stations had been abolished.

Defenders of regulation concede that the government could have allocated the spectrum differently to give more people a chance to use the airwaves. As Senator Hollings points out, instead of a smaller number of full-power stations, it could have called for a greater number of stations at less power, mandated stations to share frequencies, or treated stations as "common carriers" offering use of the spectrum to anyone at set rates and without control over programming.

But legislators instead "concluded that the public interest would be best served by fewer stations with greater power each under the control of a single owner. While the opportunity for members of the public was thereby limited, broadcasters were required by statute to act as trustees for all the public in exchange" for the privilege. [6]

Because the government allows only certain people to operate broadcast stations, the views expressed by the chosen ones are said to enjoy an unfair advantage over the rest of us who aren't permitted to operate a station. "Since all who wish to broadcast cannot do so, there is an inherent danger that the flow of information can be re-

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stricted." [7] As part of their public interest duties, broadcasters therefore should cover issues of local interest and provide citizens with the opportunity to express their views. This is the heart of the Fairness Doctrine.

If broadcasters don't allow responses, where can the average citizen turn? When the Fairness Doctrine was in effect, anybody who felt his side had been slighted could file a complaint with the FCC, which could order stations to give free time. Broadcast regulation—and specifically the Fairness Doctrine—hence promotes public debate, say its defenders. "The genius of the Fairness Doctrine," write Ralph Nader and David Danner, "is that it promotes debate without interfering in the editorial process. Nothing in the Fairness Doctrine ever denies a broadcaster the right to say what he or she pleases. Rather, compliance is attained by carrying more, not less, discussion of issues." [8]

Again, Fairness Doctrine backers prove better theorists than empiricists. Rather than invigorating public debate, the Fairness Doctrine chilled it. Instead of improving citizens' access to the airwaves, it was a reason to deny them. As Representative Howard Coble put it during House debate on the doctrine, "In the abstract, 'fairness' is laudable. In the reality of an often expanding regulatory atmosphere, a governmental determination of 'fairness' will consistently fall short and fail to serve faithfully the public interest." [9]

"Cocked Gun" Regulation

There was little objection to the Fairness Doctrine when the FCC formally adopted it in 1949. In fact, it was an improvement over the previous rule, the Mayflower Doctrine, which prohibited broadcasters from editorializing at all.

Not that they all wanted to. Broadcasters and regulators were already aware of the threat that a spirited debate could mean to the licensee. As early as 1934, it was known that "An innocuous schedule could mean prompt renewal" of the broadcast license, while "A provocative one could bring delays." [10] "Any vigorous presentation of a point of view will of necessity annoy or offend at least some listeners," noted the FCC in its 1946 Blue Book. "There may be a temptation, accordingly, for broadcasters to avoid as much as possible any discussion over their stations, and to limit their broadcasts to entertainment programs which offend no one."

Nevertheless, declared the Commission, "the public interest clearly requires that an adequate amount of time be made available for the discussion of public issues." In its report formalizing the Fairness Doctrine three years later, the FCC called on "broadcast licensees to provide a reasonable amount of time. . . to the discussion and consideration of public issues." Avoiding "serious and provocative program content" was considered "an unfair use of broadcast facilities," and could be grounds for revoking a station's license.

But in practice a band of regulators in Washington cannot possibly monitor every station's programming 24 hours a day, 365 days a year. It must rely on citizens to make sure that the "trustees" are fulfilling their obligations. Yet, as Senator Robert Packwood points out, "Most people are not aggravated by what they do not hear; they are aggravated by what they hear, and they think it is not fair, so they complain" to the FCC. Despite their obligations, broadcasters "simply avoid controversial issues, and nobody sues them much for that." [11]

It was not until 27 years after the Fairness Doctrine was proclaimed, in 1976, that the FCC cited a station for not covering a specific controversial issue of local importance.

An FCC report released in August 1985 described more than 60 specific examples where broadcasters "shied away from covering controversial issues in news, documentaries and editorial advertisements" for fear of triggering fairness complaints, and concluded that the Fairness Doctrine "chilled" speech. It resulted in a "net loss, not an enhancement, of speech," said FCC general counsel Diane Killory in her statement announcing repeal of the doctrine. As the *Des Moines Register* observed, "The doctrine doesn't promote fairness; it promotes blandness." Instead of getting opposing sides, listeners often ended up getting no sides of a debate.

Doctrine supporters are quick to note that complaints rarely resulted in action by the FCC, as if this were an argument in favor of the Fairness Doctrine. Colorado Senator Tim Wirth estimates that 98 percent of fairness complaints were routinely dismissed as frivolous or unfounded.

Between 1980 and 1987, the FCC received

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about 50,000 fairness complaints, but found only one violation. In the 35 years 1934-1978, only 5 broadcast licenses were revoked for violations of the doctrine. For the overwhelming majority of people, then, the Fairness Doctrine in practice just didn't give us access to the airwaves.

But if so, how could the doctrine really have chilled broadcasters? Simple: it was a "cocked gun." As the Supreme Court said in another press-freedom case, "it is not merely the sporadic abuse of power . . . but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion."

Defending against even frivolous complaints is expensive. The cost to the station averages about $60,000 if the FCC calls a hearing. It's cheaper to keep quiet, just in case.

Nobody disputes that striving for balanced coverage is a desirable aspect of competent news journalism. Unfortunately, however, one person's "objectivity" is another's "hatchet job." A look at a list of organizations supporting the Fairness Doctrine, released by Representative John Dingell, reveals dozens of pressure groups on opposite sides of a wide assortment of emotional issues, each supporting the doctrine for its own ends: Americans for Democratic Action and American Conservative Union; General Motors and United Auto Workers; American Jewish Committee and National Association of Arab Americans; Mobil Oil and Fund for Renewable Energy; People for the American Way and American Baptist Churches; Accuracy in Media and Media Access Project.

Given the array of contending groups, each one sharply tuned to the slightest hint that the other side might have put an extra spokesman or one more statement on the air, even the most scrupulous reporter can hardly cover any controversial topic in a way that will avoid bitter charges of "bias" from one side, maybe from both. When the charges may be accompanied by demands for time under threat of referral to regulators, it is not difficult to understand why under the Fairness Doctrine broadcasters often preferred to avoid certain topics altogether. And, given the way competing ideological groups use the media for one-upmanship, it is not difficult either to understand why uninterested observers might find most fairness complaints frivolous.

For a hint of how public debate might proceed without the Fairness Doctrine, compare television with a medium where the doctrine has never applied—cable television. In 1986, W. R. Grace & Co. had great difficulty placing on national television a series of ads attacking the Federal budget deficit. The networks were reluctant to air "advocacy advertising" that might have triggered demands for free rebuttal time. On the other hand Cable News Network, as a non-broadcast operation, did not have to offer free rebuttal time, and felt free to present strong citizen-initiated messages such as Grace's spots.

Ironically, the Fairness Doctrine thus both frequently inhibited broadcasters from covering controversy, *and* seldom permitted citizens to reply to what they perceived as "biased" programming. Broadcasters were chilled and the public ignored.

Many Ways Out

The spectrum is not as scarce as we have been told, and in any event the Fairness Doctrine, despite notable individual cases, by and large failed both to encourage vigorous debate and to provide for public participation.

What, then, can activists and concerned individuals expect now that broadcasters have been freed from fairness requirements? Is the only option to give up and tell broadcasters: "We are at your mercy; go ahead and say what you will, we can't do anything about it"?

Hardly. There may be a scarcity of broadcast alternatives in a theoretical sense, but this does not mean that there is a dearth of opportunities to utter opinion on the airwaves. Only certain people are licensed to broadcast, but they are not "few." Even today's artificially limited market offers numerous outlets to hear and express our views.

There are 1,570 television stations and 10,837 radio stations in the United States. Ninety-six percent of U.S. television households receive five or more television signals, and 71 percent receive nine or more.

Local television stations offer approximately 600 public affairs programs, 170 talk shows, and 124 "civic," "ecology," or news commentary programs. Radio stations produce some 2,200 separate public affairs programs, 1,400 talk shows, and close to 1,000 civic, ecology, or news com-

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mentary programs. Every one of these airs on at least a weekly basis.

With or without the Fairness Doctrine, today's broadcast marketplace offers no paucity of alternatives for people to hear and express diverse views. Talk shows, even all-talk radio stations, have demonstrated their commercial viability. They will not go away merely because the Fairness Doctrine was repealed.

We don't need a broadcast license in order to be heard. There are literally thousands of stations and programs to which groups of various political stripes can turn to voice their opinions—at no charge. But if a station refuses to grant free air time to rebut a one-sided report, we can offer to buy time.

One of the ironies of the Supreme Court's celebrated *Red Lion* decision upholding the Fairness Doctrine is that the station airing the offending broadcast, WGCB in Red Lion, Pennsylvania, offered the plaintiff, Fred Cook, 15 minutes to reply at the regular rate of $7.50. The offending program also had been a paid 15-minute broadcast.

Instead, Cook demanded free air time under the Fairness Doctrine. Off to the FCC and the courts they went, and he got the time—five years later. By then the issue in contention was dead, and Cook declined the offer. Had he bought the time he could have rebutted the original broadcast while it still mattered, and for a lot less trouble.

If a station refuses to sell us time, there are plenty of others in the market who'll be happy to do so, and who will air our spot as many times as we wish, often at surprisingly affordable rates.

In 1985, we could buy a full half-hour program slot on radio station WPOW in New York City for $200; for $85 on KAFF- FM in Flagstaff, Arizona; or for $75 on WEUP in Huntsville, Alabama. If we didn't need that much time to tell off our opponents, we could buy a one-minute spot for $30 in Provo, Utah; $21.50 in Lawrence, Kansas; or $14.75 in Salem, Oregon. Multiple airings cost even less per spot. [12]

In 1962, 66 percent of AM radio and 25 percent of FM stations reported a profit. In 1972 the figures rose to 72 and 38 percent, respectively. By 1980, the proportion of profitable AM stations was down to 59 percent, while 50 percent of FM stations made a profit.

The historical pattern for television stations is similar, though more favorable. In 1955, 63 percent of VHF and 27 percent of UHF stations reported a profit; in 1977, 92 and 73 percent, respectively; but in 1980, profitable VHF stations were down to 89 percent, UHF to 58 percent.

The point is that, despite the market-limiting effects of broadcast licensing, having a license does not amount to "a license to print money." Broadcasting can indeed be very profitable, but there are plenty of stations which are hungry for revenue and which will eagerly sell air time to individuals or groups with something to say.

This is not to imply that all broadcasters, now freed from the strictures of the Fairness Doctrine, will automatically sell air time for political debate or cover both or even one side of an issue—any more than while the doctrine was in effect all broadcasters shied away from the issues. But on the whole we can expect, if anything, less timid coverage and more robust debate to come on the air from broadcasters and citizens alike.

The Fairness Doctrine was a questionable theory born of poor history. It both chilled broadcasters' freedom of speech and limited citizens' access to the airwaves, free or paid. What slender logic may have buttressed it in the beginning has long since given way to the proliferation of audio and video services.

Without the "fairness" gun cocked at their heads, station operators will feel a lot more comfortable airing spots on controversial issues. And we'll have a better chance to get our say. □

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Hunger and Farming in Black South Africa

by Frank Vorhies

Africa has some of the hungriest people on earth. In nations like Ethiopia and Mozambique, the human suffering is overwhelming. The African people are also among the least free people in the world. There are virtually no democracies on the continent. There is also generally no economic liberty. Simply stated, Africans starve because they do not have the freedom to grow or trade for the food they need to eat.

This essay focuses on black farming in South Africa. It is written in light of an emerging political and economic understanding of poverty and hunger in Africa. As noted, free people are generally not hungry. They do not starve. The question for Africans is: Why are they not free? Why do we not see African nations that are democratic and capitalistic?

The emerging view of the problem can be called a revisionist understanding of the impact of European colonialism on African development. The Marxists have long blamed the plight of Africa on colonialism and neo-colonialism. They are partially correct, but for the wrong reasons.

Africa is not starving because Europeans imposed alienating and exploiting relations of capital on the African people. Africa is starving because colonialism prevented capitalism from flourishing.

The goal of most colonial systems was not to produce, but to take. The classic examples are the Spanish in Inca Peru and Aztec Mexico. The Spanish conquered these peoples to extract their wealth, especially their gold. Centuries later, the Europeans went into Africa for the same purpose. The one major exception was the Afrikaners, people of Dutch, French, and German descent who came to the Cape of Good Hope to settle and to produce.

In economic terminology, the European colonialists were rent-seekers, not profit-seekers. They came to take a big slice of the African pie, not to bake more pies. They came to take and not to stay. Accordingly, the Europeans set up structures of government that maximized their ability to extract the wealth of the continent. They set up political and economic systems of rent-seeking, not profit-seeking.

When independence came to Africa starting in the 1950s, the new African leaders took over the existing structures of government. These structures had been designed to extract rents for those in power. They were not designed to promote profit-seeking activity. European colonialism was replaced by African neocolonialism.

Into this situation entered the Marxists. Following Lenin's flawed concept of capitalist imperialism, they labeled colonialism as part of capitalism. In fact, colonialism was part of the pre-capitalist system of mercantilism. Nevertheless, the Marxists, with international support, replaced so-called capitalist colonialism with African socialism. The results have been disastrous.

In Africa today, the hunger brought about by European colonialism has in many nations been replaced by the starvation brought about by

Dr. Vorhies has taught economics at the University of Colorado at Boulder, the University of Denver, and, most recently, at the University of the Witwatersrand in South Africa. This article is adapted from a paper presented at the 1988 Mises Lecture Series at Hillsdale College.

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African Marxism. Angola, Ethiopia, Mozambique: they are all Marxist. Their peoples are starving. Within South Africa itself, the same problems and challenges exist. Hunger stemming from European colonialism persists. Starvation from the global effort to instill African socialism in the nation is a real possibility.

Farming in South Africa

The Republic of South Africa covers less than 4 percent of the African continent. Yet the country produces 17 percent of Africa's red meat, 20 percent of its potatoes, 27 percent of its wheat, 31 percent of its sugar, 45 percent of its corn, 54 percent of its wool, and 81 percent of its sunflower seed. The government's Bureau for Information proudly boasts of South Africa's significant agricultural exports: "Today South Africa is one of only six net food exporting countries in the world. . . . South African food exports have become a lifeline for many countries in Sub-Saharan Africa."

With such impressive statistics, why should one focus on hunger in South Africa? Its agricultural output is indeed impressive. By African standards, malnutrition and starvation are low. The average daily food consumption is 117 percent of the U.N. Food and Agriculture Organization's recommendation. Though average levels of agricultural output and nutrition may be high, the variations are also high. The wealthiest 10 percent of households earn 39.4 percent of national income. The poorest 20 percent earn only 1.9 percent of national income. By comparison, the U.S. shares are 23.3 percent and 5.3 percent, respectively.

Hunger exists in the black regions of South

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Africa. These regions are the legally separated tribal reservations or homelands ("bantustans"). The four independent homelands are Bophuthatswana, Ciskei, Transkei, and Venda. The six so-called self-governing homelands are Gazankulu, KaNgwane, KwaNdebele, KwaZulu, Lebowa, and Qwaqwa. The government has assigned approximately 40 percent of the 33 million people in greater South Africa to these districts. The additional 30 percent of the population that is black reside in the four (white) provinces: Cape, Orange Free State, Natal, and Transvaal.

Early Black Farming

Leon Louw and Frances Kendall begin their best seller, *South Africa: The Solution*, with a chapter called "Black South Africans: Their Rise and Fall." It reviews the early successes of the black farmers in the eastern Cape. Under British colonial rule, these farmers were allowed to own land and to market their products freely.

One of the more interesting stories is of the Mfengu people. In the 1830s, the governor of the Cape Colony allowed the 16,000 Mfengu to settle with their 22,000 cattle in the area now known as the Border Region. He used them as a buffer between the Xhosas and the British settlements, including Port Alfred and Grahamstown. The Mfengu took advantage of their new opportunities and developed into a prosperous farming community. Louw and Kendall explain:

> On arrival . . . they entered agricultural service as cattle herders and shepherds, and were engaged in tilling, ploughing and reaping. . . . They used their wages to invest in sheep, wagons and tools, and were rewarded with land for fighting in the Cape Army. . . . By the 1840s and '50s they were selling tobacco, firewood, cattle and milk and disposing of surplus grain for cash or stock. . . . By the 1870s, black farmers in the Eastern Cape were extremely active and prosperous. The Mfengu competed against white farmers at agricultural shows and won many prizes. . . . By 1890 there were many progressive black commercial farmers who had purchased their farms outright. They invested much of their profits in fences, irrigation and improved stock breeds, and adopted the most advanced farming methods of the time. . . . By 1890 there were between one and two thousand of these affluent black commercial farmers.

Like most colonized peoples during the last century, the Mfengu lacked political rights and civil liberties. They were, however, granted basic economic rights. The success of these early black farmers was due to a guarantee of private property and a free market.

Regrettably, the development of a free market for black farmers in South Africa did not continue. A prosperous, independent black farming community did not fit with the development plans of British colonialism. These plans included white-owned, black-worked farms and mines.

European colonialism had been successful in the western Cape, as in North America, because the indigenous population was easily eliminated. In the eastern Cape, however, the blacks were more sophisticated herders and small-plot farmers. If British colonialism was to expand there, black advancement would have to be halted. Private property and free markets would have to be taken away. Tribal land tenure would have to be reinstated.

Through a series of Location Acts passed in 1869, 1876, and 1884, the colonial government limited the rights of the independent black farmers. This was done to force them to work on the white-owned farms and mines. An empire requiring cheap black labor could not allow for independent, prosperous blacks.

In 1894, Cape Prime Minister Cecil Rhodes limited the land that each black farmer could own to ten acres, an amount barely sufficient for subsistence. In so doing, Rhodes protected white farmers from black competitors and secured a labor force for his mines.

At the turn of the century, over a million blacks were farming their own land or land leased from whites. The 1913 Land Act put an end to this by outlawing rent-paying and sharecropping farming by blacks. Blacks were required to be wage-laborers for white landowners. In the name of the British crown, the colonial government closed the free market to black South Africans.

Years before the 1948 rise of the National Party and official apartheid, blacks had lost rights of private property and free trade. Apartheid went

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further. It divided South Africa into the ten tribal homelands. The State based these on traditional tribal lands and on the reserves instituted under British colonialism. The homeland governments imposed inefficient tribal customs regarding property and trade. These were further supported by the restrictive rules and regulations originally set up by the British.

The division of South Africa into white and black areas, however, had virtually been completed by 1936. The Land Act of 1936 completely outlawed black purchase of white land. During the 1960s, blacks still owning land in white areas were forced to move. Today blacks still cannot own land in more than 85 percent of greater South Africa.

In the white areas, whites own their property outright. They can buy and sell land on the open market. In the black areas, land is allocated on a tribal/colonial basis. Under tribal/colonial law, the land available to blacks is commonly not available as private land.

The effect of the lack of private farm land and of free agricultural markets is persistent hunger and poverty. Tribal chiefs allocate land for political, not economic purposes. Farming for profit is virtually impossible. Writing in *Land and People*, David Cooper explains:

> In most areas landholding is based on a one-family one-plot system, with land allocated by the Tribal Authorities. . . . Since chiefs and headmen control the system and get their power and privilege from the right to allocate land, they feel no need to find a more productive system of land-use. . . . A few individuals grow crops for market, but most people produce for the home and sell only if they have a surplus. No organised market exists in most of these areas, so there is no incentive for people regularly to produce a surplus.

The inefficiencies of the tribal/colonial land tenure are not unique to South Africa. In neighboring countries, there exist similar systems of land tenure with similar disastrous results. Agricultural output in southern Africa, as in the rest of Sub-Saharan Africa, remains far below potential. Unique to South Africa is the continuation of an inefficient tribal/colonial land system for blacks alongside a system of private ownership for whites. Tribal/colonial land tenure and the Group Areas Act of 1950 prevent the development of a system of private property for blacks. Productive, commercial black farming is still not possible.

The Socialist Position

The tribal/colonial system of land tenure has broader implications than low black agricultural output. The system reinforces the socialist view of political-economic relations in South Africa. At the English-speaking universities in South Africa, including Cape Town, Natal, and the Witwatersrand, extensive research programs study agriculture from a Marxist perspective.

South African socialists view the tribal/colonial system that has existed since the days of Rhodes as part of the overall capitalist system. It insures that the (black) workers remain dependent on (white) capitalists for their livelihood. Agrarian problems are viewed as an integral component of capitalist exploitation.

With this perspective, Marxist scholars research issues such as freehold tenure, the moves toward democracy, and the prospects for socialism. For example, in the December 1987 issue of *Africa Perspective*, J. Krikler contends that agriculture is the "weak link in South African capitalism." Breaking that link is believed to be key to a socialist revolution.

Others contend that so-called bourgeois reforms will not improve the conditions of blacks. They maintain that attempts to bring about private ownership and free markets in black farming will make conditions even worse. This view is clearly stated in a recent issue of the *South African Review*:

> The establishment of a "free market" in bantustan land will have devastating consequences. Relations in the market are inherently unequal. The abolition of regulatory controls in favour of market forces are inherently unequal. . . . The privatisation of bantustan land based on free market principles will lead to an escalation of landlessness and an intensification of poverty and inequality in access to economic resources.

The socialist analysis of the agrarian problem in South Africa leads to proposals to socialize agriculture. Rather than advocating a move from

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the tribal/colonial system to a free market system, the Marxists label the tribal/colonial system capitalistic. Private property reforms will only make matters worse, they claim. Black farming will be improved only through moving directly to socialism.

Socialism means nationalization of agricultural land and the central planning of agricultural production. Krikler contends that: "Expropriation without compensation remains the only feasible first step towards socialism in rural, as in industrial, South Africa." Once the land is seized by the State, it will be managed according to well-established socialist principles. Writing in *South African Review*, David Cooper emphasizes this point:

> The productive core controls so much production because it owns such a high proportion of agricultural land and capital. Leaving the periphery with its poor land base and limited resources to provide for the majority of rural South Africans, will in effect extend the bantustans without substantially changing the pattern of poverty found there at present. . . . It will be essential to tap the resources of the productive core for any land redistribution policy to succeed. . . . An expropriation policy must therefore concern itself with the organisational forms—collectives, state farms or cooperative ventures—that will be appropriate in the productive core. Such a policy would involve intensive settlement of people from unviable areas.

The South African socialists, however, are surprisingly utopian about socializing agriculture. One effect of sanctions against the country seems to be that of isolating them from learning about the experiences of socialist countries. The historical record of collective farming shows it to be a dismal failure.

A direct transition from a tribal land tenure system to a socialist system took place in China. Mao's program differed from Stalin's collectivized farming only in that it was even more disastrous. Alvin Rabushka explains:

> . . . Mao Zedong launched the most extraordinary economic adventure the world has ever seen—the Great Leap Forward of 1958. He combined agricultural cooperatives into communes. . . . The government confiscated private plots, abolished rural free markets and distributed grain on an egalitarian basis. To Mao's dismay, grain output fell 20 percent in 1960 from 1957 levels, causing widespread famine and an estimated 30 million unnecessary deaths during 1958–1962.

Socialist policies that cannot work in Europe or in Asia also cannot work in Africa. The so-called African socialism in Tanzania destroyed that nation's agricultural economy. Before socialism, Tanzania had a strong agricultural sector. Over 80 percent of its exports were agricultural products. Socialist policies soon changed this. Sven Rydenfelt writes:

> By 1979, five years after the enforced resettlement, domestic agricultural production in Tanzania was already incapable of providing the cities with food. Imports had to be increased to compensate for declining production, and in 1980 no less than half of the food needed by Tanzania was being imported. A decade of socialist agricultural policy had been sufficient to destroy the socio-ecological system.

The hunger perpetuated by the tribal/colonial land tenure system is surpassed by the mass starvation perpetuated by socializing agriculture. The continuation of an unproductive homeland policy supports Marxist analyses of the South African situation. In so doing, it also suggests a utopian movement that will make matters even worse. The prevention of mass starvation requires instead a reformulation of South Africa's agricultural policies to include productive black farming.

Black Market for Farming

The solution to the low productivity on black South African farms is to create a system of private property and free markets. In the tribal homelands, prosperity requires that the blacks be allowed to exercise the rights to private sector participation now available to the whites. As noted, the Mfengu tribe in the eastern Cape became productive and prosperous under a system of private property and free markets. In South Africa, this system needs to be reinstated. Tribal/colonial land tenure and the Group Areas Act must go.

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Private property and free markets, furthermore, are culturally compatible with black African values. Tribal/colonial land tenure in the homelands only perpetuates inefficiencies existing in pre-industrial African customs. Socialist agriculture, on the other hand, directly conflicts with basic African values. George Ayittey, an economist from Ghana, strongly emphasizes this point:

> Africa does not need more IMF loans or Western aid. The most effective aid the world can ever give Africa is to help it reinstitute its own *native* freedom of expression. The emphasis is on native. In fact, the blueprint for real reform in Africa does not lie in the corridors of the IMF or Western banks. Nor in the inner sanctum of the Soviet bureaucratic behemoth, but rather in Africa's own indigenous system. . . . A close study of Africa's indigenous system reveals the existence of the basic tenets of democracy, free markets, free trade, freedom of expression and free enterprise. . . . Instead of developing the native institutions, we destroyed them. That's why Africa starves and is enmeshed in chaos, crisis and disintegration.

A recent study by G. Feder and R. Noronha in *The World Bank Research Observer* supports Ayittey's view. The authors explain that the evolution of land rights was distorted by colonial and post-colonial governments. These interventions brought about serious inefficiencies and inequities that would not have come about naturally in African markets. They contend:

> The evidence dispels some popular misconceptions about land rights systems in Sub-Saharan Africa. There is increasing individualization of ownership, and in many areas possession has always been individual. . . . The lesson from other parts of the world is that efficiency ultimately requires formal recognition of individual land rights.

The promotion of private property and free markets for blacks will do more than overcome hunger in South Africa. It will help prevent mass starvation. It will undercut the ever-growing drive for a socialist revolution in the country. At a recent conference, Professor J. A. Groenewald of the University of Pretoria looked at the strategic aspects of the South African agricultural situation. He explained:

> Many a revolution has had its stages of germination and early growth in rural surroundings. . . . It is rather obvious that a happy, satisfied rural population is of great strategic value. Revolutionaries and troublemakers find such an environment to be a completely unsatisfactory growth medium.

A happy and satisfied rural black population will be one that has the right to own farm land privately and to trade their produce freely. Those opposed to hunger in South Africa and the growing prospect of mass starvation have no choice but to support private property and free markets for all South Africans. □

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GATT and the Alternative of Unilateral Free Trade

by Pierre Lemieux

From December 5 to December 9 of last year, representatives of more than 100 national governments met in Montreal for the mid-term ministerial review of the Uruguay Round of multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT).

What Is GATT?

GATT is a commercial treaty, whose aim, as stated in its preamble, is "the substantial reduction of tariffs and other barriers to trade and . . . the elimination of discriminatory treatment in international commerce." Its main principles include: the most-favored-nation clause, according to which any advantage granted to one signatory nation has to be extended to all others (Article I); equal treatment of goods from signatory countries in terms of internal taxation and regulation (Article II); fair trade against dumping and export subsidization (Article VI); the elimination of quantitative restrictions and the exclusive use of tariffs for protection of domestic industry (Article XI); and negotiated settlement of commercial disputes (Articles XXII and XXIII).

The name "GATT" also refers to the somewhat informal association of signatory nations, called "Contracting Parties." All Western European countries, the United States, Canada, Australia, New Zealand, Japan, as well as some 70 underdeveloped countries, plus a few Communist-bloc nations (Czechoslovakia, Hungary, Poland, Rumania, and Yugoslavia) are members. The supreme governing body of GATT is the annual Session of the Contracting Parties but, in practice, the organization is ruled by the Council of Representatives of member states. The secretariat, employing some 400 persons and headed by a Director-General, is located in Geneva.

After World War II, protectionism was widespread. Prewar tariffs and import quotas had been supplemented by wartime measures such as foreign exchange controls. Tariffs on manufactured goods averaged 40 percent in the industrialized world; in the U.S. they averaged 18 percent with peaks of 50 percent or more.

In 1945, the U.S. government started two initiatives to liberalize international trade. First, an international trade treaty, to become known as the Havana Charter, was proposed. Second, trade talks were started among 15 nations—Australia, Belgium, Brazil, Canada, China, Cuba, Czechoslovakia, France, India, Luxembourg, the Netherlands, New Zealand, South Africa, the United Kingdom, and the United States—with the purpose of immediately reducing tariffs.

The Havana Charter was finally rejected as it aimed more at managed trade and economic planning than at free trade. The second initiative, the trade negotiations, was more successful. On October 30, 1947, 23 countries—the original 15 plus Burma, Ceylon, Chile, Lebanon, Norway, Pakistan, South Rhodesia, and Syria—agreed on tariff reductions covering a significant proportion of world trade. They also rescued the commercial section of the stillborn Havana Charter and signed it under the name of the General Agree-

Mr. Lemieux is an economist and author who has been widely published in Canada and France.

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ment on Tariffs and Trade, to come into effect on January 1, 1948.

GATT has remained a provisional agreement without a formal organization to supersede it. As of June 1988, the Agreement has been officially signed by 96 nations, which represent more than four-fifths of international trade. It is also unofficially applied by some 30 other nations.

Tariff Reductions Under GATT

Before the actual "round" of multilateral trade negotiations initiated in Uruguay in 1986, seven general negotiations had been held under GATT. These negotiations have presided over significant tariff reductions. At Torquay, England, in 1951, tariffs were reduced by one-fourth on average from 1948 levels. The 1964-1967 Kennedy Round and the 1973-1979 Tokyo Round, both held in Geneva, brought more general tariff reductions: in each of these rounds, tariffs on manufactured goods were reduced by an average of 35 percent.

Following the Tokyo Round, whose decisions came in full effect in 1986 and 1987, average (weighted) tariffs are 4.4 percent in the U.S., 4.7 percent in the European Community, and 2.8 percent in Japan. Average tariffs on industrial goods have thus decreased from 40 percent after World War II to around 5 percent today.

A voluntary dispute settlement mechanism was established under the Agreement. A trade complaint brought by one state against another is discussed between them. If it cannot be settled by consultation, it may be referred to the GATT Council of Representatives (or, more rarely, to the Session of the Contracting Parties) who will normally establish a special panel of three independent experts. After holding hearings and studying the contentious matter, the panel submits a report which typically includes a ruling and suggested remedies. Panel reports are generally adopted by the GATT Council.

In the 40 years of GATT, there have been about 100 complaints put before the GATT Council, only a small number of which were not finally settled one way or another. More than half of these issues could not be immediately resolved and were the object of a panel study and report. Complaints to the GATT have increased in the past few years: in the 22 months from the beginning of 1986 alone, 20 panels were established.

As with most GATT matters, decisions are reached unanimously. GATT decisions are generally obeyed, although they often require further negotiations and compromise. The only penalty provided in the Agreement against a member that does not abide by a Council ruling is authorization for other countries to suspend advantages to the offending party, but this has been done only once.

Indeed, in many instances, GATT has effectively, albeit slowly, enforced free trade. Results of its decisions over the years include: cancellation in 1961 of a British tariff increase on bananas; the 1985 liberalization by the Canadian government of a foreign investment regulation forcing foreign buyers of Canadian companies to engage in a buy-Canadian policy; abolition in 1986 of book printing protection through copyright restrictions in the U.S., following a European Community complaint.

The New Protectionism

Yet, GATT's performance has been mixed. High tariff peaks remain: the International Monetary Fund reports that on textiles and clothing, "More than half the tariff lines in Austria, Canada, Finland, Norway and the United States carry duties in excess of 15 percent" (*Issues and Developments in International Trade Policy,* December 1988). More important, and despite some Tokyo Round efforts, GATT has been quite powerless in the face of a new protectionism based on non-tariff barriers, which not only have resisted the trend to generally decreasing tariffs, but have been on the rise since the 1970s. Also, the Agreement itself has been used to legalize new tariff and non-tariff barriers. Subsidies, countervailing duties, and anti-dumping duties have increased.

Non-tariff barriers are very diversified and include import licensing, foreign exchange authorizations, minimum import prices, and a number of bureaucratic obstacles at customs points. In industrialized countries, the major barriers are technical standards, government procurement policies, and quantitative restrictions.

Technical standards and regulations. These are health, environmental, or consumer protection regulations that are often used to close the domestic market to foreign products. Recent exam-

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ples include a Canadian government agency's standards barring some American plywood from being used in Canadian construction, or the European Community forbidding imports of American meat treated with growth hormones.

Government procurement policies. Government purchases often involve preferences for national suppliers. The Tokyo Round has slightly opened up this market, but many contracts by state, provincial, and local governments remain closed to foreign bidders.

Quantitative restrictions. This category includes import quotas and export restraints, and is the most important and disruptive type of non-tariff barrier. Import quotas apply on many agricultural products (sugar in the United States is one example among many). In May 1988, 261 export restraints were in effect, most of the so-called "voluntary" variety. Many nations have skirted GATT regulations by blackmailing other countries into "voluntary" export restraint agreements in such industries as steel (more than 30 agreements), electronics, and automobiles. Including textiles and clothing, voluntary export restraint agreements cover some 10 percent of world trade.

In a December 6 statement to the Ministerial Meeting of the Trade Negotiations Committee in Montreal, World Bank President Barber Conable noted that trade affected by non-tariff barriers almost doubled in the last 20 years. For example: 56 percent of iron and steel imports are hit by non-tariff barriers, nearly 90 percent of food imports by industrialized countries face such barriers, as do 21 percent of undeveloped countries' exports of manufactures to developed countries.

In fact, many forms of the new protectionism have relied on exceptions duly recognized and thus legalized by GATT, such as anti-dumping or countervailing duties, safeguards, and the Multifibre Arrangements.

Anti-dumping and countervailing duties. These measures are meant to counter so-called unfair trade. Anti-dumping duties (such as the 6 to 47 percent duties just imposed by the European Community against Japanese dot matrix printers) are recognized by Article VI of GATT as a means of protecting domestic producers against products sold in their markets at lower prices than in the exporters' own markets. If the underselling is caused by a foreign government's subsidies, Article VI legalizes countervailing duties as a retaliatory measure. One recent example is the countervailing duties imposed by the U.S. government against Canadian soft-wood producers.

Safeguards. Even when no unfair trade practices are alleged, and notwithstanding other GATT articles, a country is empowered by Article XIX to enact emergency actions or "safeguards" against any imported products that "cause or threaten serious injury to domestic producers." Safeguards may be tariffs, quantitative restrictions, or any other measure. From 1950 to the end of 1988, 134 Article XIX actions had been taken; at mid-1987, 26 of these measures were still in force.

Multifibre Arrangements. Despite lip service about the desirability of opening up developed markets to producers from poorer nations, less developed countries have been badly hurt by the new protectionism, often with GATT's seal of approval. Protectionism in agricultural and especially tropical products is one example. But perhaps the worst case is the Multifibre Arrangements, renegotiated many times since 1974 under GATT. Under the Multifibre Arrangements and the 60 or so bilateral agreements signed under its authority, textile and clothing imports from underdeveloped countries into industrialized countries are severely restricted. This has led to a 20 to 50 percent increase in clothing prices for consumers in industrialized countries.

Other exceptions. Many other exceptions to free trade are legal under GATT, such as restrictions to safeguard the balance of payments (Article XIII), or to favor underdeveloped countries and their policies (Article XVIII and the new Part IV of the Agreement).

Subsidies. Government subsidies are often classified as non-tariff barriers but should be treated differently. On the rise mainly in agriculture but also important in other sectors (e.g., aeronautics and shipbuilding in Europe, automobiles in France), they have provided good excuses for a host of new tariff and non-tariff barriers.

Two periods may be distinguished in the post-war history of international trade. From GATT's formation until around 1970, tariff and, to a cer-

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tain extent, non-tariff barriers were on the wane. Starting around 1970, a phenomenon began to parallel the decline of tariffs: the growth of non-tariff measures. According to some estimates, the percentage of U.S. imports covered by protection increased from 8 percent in 1975 to 21 percent ten years later (*The Wall Street Journal*, November 1, 1985). All over the world, this new protectionism has now cancelled much of the liberalization of the past decades.

The Tokyo Round had tried to deal with non-tariff barriers, subsidies, agriculture, services, safeguards, and so forth, but with little success. Many of the unresolved issues, which are also main contributors to the new protectionism, stood in the forefront of debates and disagreements in the recent negotiations in Montreal. Agricultural subsidies were the main contentious issue; the U.S. proposal to eliminate them by year 2000 was rejected by the European Community. Final adoption of frameworks of agreement on matters such as tariffs, services, tropical products, and better enforcement of GATT decisions were made conditional upon resolution of this issue. Moreover, no agreement could be reached on textiles and clothing, safeguards, and protection of intellectual property. The Uruguay Round negotiations are to last until 1990.

GATT's multilateral trade negotiations are based on the idea that trade liberalization requires a global approach by all sides. Bilateral agreements, as were used before (including in GATT's early history), were found to be too clumsy, slow, and inefficient. Multilateralism is now threatened again by the rise of bilateral trade actions, on the one hand, and by regional free trade areas, on the other hand. Bilateral agreements such as the Canada-U.S. Free Trade Agreement, the U.S.-Israel Free Trade Agreement, and the Australia-New Zealand Closer Economic Relations Trade Agreement were partly designed to counter the threat of the new protectionism, but they may have added fuel to it. Bilateral or regional free trade agreements do not necessarily lead to freer trade at the world level, and fears that protectionism may be actually strengthened by "Fortress Europe" and "Fortress America" are not without foundations.

But, as we shall see, multilateralism, bilateralism, and regional free trade areas are not the only alternatives.

The roots of the difficulties in achieving free trade lie in philosophical problems that are not unique to GATT, but which help to explain the recent underachievements of this organization.

In GATT's language and culture, individuals are identified with their countries which, in turn, are equated to their respective governments. This statist approach leads to a related problem. One often wonders whether what GATT tries to enforce is free trade or managed trade, i.e., its very opposite. In GATT, everything is done by or through national governments, everything is thought of in terms of state action. One GATT brochure (*Aider la croissance mondiale*) stresses that the General Agreement is "not a 'free trade charter' " but provides means for controlling protection of domestic industry. The necessity of some protection is unquestioned and, as we have seen, permitted or even encouraged under GATT. The requirements of domestic policies and planning have precedence over the principles of free trade. Has the Havana Charter made an anonymous comeback?

Another aspect of this fundamental misunderstanding is the philosophy of inter-governmental negotiations, on which the whole GATT system is based. It conveys the false idea that the less one government gives up and the more the other "contracting party" concedes, the better off people are. This approach is reminiscent of 17th-century mercantilism which viewed exports as wealth and imports as costs.

In a very real sense, freer trade does not need agreements between nations. Trade can be freed by declaring free trade unilaterally, which is basically what the British government did in the middle of the 19th century. British Prime Minister William Gladstone went so far as saying that "a commercial treaty would be an abandonment of the principles of Free Trade . . . if it were founded on what I may call haggling exchanges." The basic philosophical failure of GATT is that it may have distracted us from the advantages of unilateral, one-way free trade.

Unilateral Free Trade

Although the idea of unilateral free trade has not yet passed into popular culture, it has been generally accepted by economists since the time of Adam Smith (1723-1790), John Stuart Mill

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(1806-1873), and the Physiocrats in 17th- and 18th-century France. The desirability and feasibility of unilateral free trade can be demonstrated in three steps.

First, it must be realized that advantages from international trade stem more from imports than from exports.

Individuals, not countries, are the real trading partners and the ones who benefit from trade. Now, the advantages from trade come more from what one buys than from what one sells. Advantages from trade with your butcher lie more in the meat you buy from him than from the work you do to earn the money to pay him. We trade because we think that what we get is worth more than what we give up. Similarly, we work and produce in order to consume.

This applies also to international trade, which is only inter-individual trade over a political border. As individuals produce in order to consume, and sell in order to buy, so they export in order to import. From the point of view of individual traders, importation is the goal; exports are just a way to finance their consumption. Advantages of international trade come more from the freedom to import than from the capacity to export. GATT is plagued by the same problem as governments: it is more a producers' club than a consumers' association because, as shown by the Public Choice school, the interests of the latter are less concentrated and, thus, less vocal. Maximum prosperity requires that we let consumers (and firms as intermediaries) import freely as they wish.

Would not freedom to import lead to chronic balance of payment problems? No, for the simple reason that in order to import, residents of a country must export an equivalent value. Exports necessarily equal imports. This is the second step in demonstrating the advantages of unilateral free trade.

The basic reasoning is quite straightforward. As John Stuart Mill showed 200 years ago, "an imported commodity is always paid for directly or indirectly with the produce of our own industry." An American company pays for its imports in U.S. dollars, which are nothing but titles to American production. The foreign firm receiving the dollars can sell them in exchange for domestic funds. The final foreign acquirer of these U.S. dollars will use them to import from the U.S., or will save them to exercise later his claim to American production. Alternatively, imports into the United States can be financed by foreign loans, but these eventually will have to be repaid and thus represent titles against future U.S. production. If we look beyond the veil of money and financial transactions, then, products are exchanged only against products. Increasing imports will automatically promote exports.

This is just another way of saying that, since each trading company or individual takes care of his own balance of payments (i.e., revenues and expenditures), there can be no overall balance of payments disequilibrium. A current account balance deficit (higher imports than exports of goods and services) is financed and exactly compensated by a capital account surplus (net inflow of capital). Conversely, a capital account deficit (net capital outflow) serves to finance our partner's current account deficit, i.e., to compensate our own surplus. The correspondence need not be exact between any two countries, but the equality of all exports and imports must hold between any one country and the rest of the world.

The third step in our demonstration will be to show that domestic protectionism compounds problems.

It is true that foreign protectionism will reduce America's capacity to export. But as imports cannot exceed exports over time, foreign protectionism will also reduce American imports. Now, suppose the U.S. government retaliates with domestic protectionism. This will directly reduce the American consumers' liberty to import, adding further to the disadvantage of foreign protectionism. If Americans import less, they will not be able to export as much since their imports are somebody else's exports and revenues. It can thus be seen that domestic protectionism reduces both domestic imports and exports; it further limits two-way trade and compounds the problems of foreign protectionism.

It follows that if your neighbor is protectionist, you can limit damages to yourself by buying from him as much as it is in your interest and capacity to do. These purchases will automatically finance themselves since, by permitting foreign vendors to sell here, we also oblige them to buy from us, one day or another, a corresponding value. As a consequence, unilateral free trade represents the

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best strategy for the victim of protectionism.

The argument for unilateral free trade was well-known to French economists of the Physiocratic School. Pierre Mercier de la Rivière (1720-1793) wrote about free trade: "It is obvious that a nation can implement it by itself, independently of other nations; the right of property can become a sacred right for its subjects without becoming so in all foreign countries." Another Physiocat, Pierre Dupont de Nemours (1739-1817) added, talking about protectionism: "If some foreign power becomes guilty of one of the offenses we just talked about, let us never be led into retaliatory actions because these would be all against our nation's interest."

These theoretical considerations can be brought to bear on GATT. Let us suppose that the Uruguay Round turns out to be a failure in 1990. International markets could still be significantly opened up by any large country or any number of countries unilaterally freeing their citizens from their own import restrictions. Through unilateral elimination of trade barriers, we could obtain many of the advantages of GATT. Higher imports would result, but they would have to be paid for by increased exports, or by capital inflows which mean increased exports in the future.

Any absolute advantage poor countries have in labor costs would be counterbalanced by our advantages in capital-intensive production and/or by exchange rate adjustments. Trade would increase and flow according to comparative advantages. The economic distortions and moral disgrace of trade barriers against underdeveloped countries would be eliminated. Indeed, the best way of fostering development in these countries (besides a liberalization of their own internal policies) is to allow them to export in order to finance their imports from us.

As far as agricultural subsidies are concerned, the U.S. government is right in arguing that they must be abolished. But again, this problem could, and should, be solved unilaterally. Let's just announce (in Canada and/or in the United States) that we will abolish our own subsidies. Even if agricultural subsidies were not abolished elsewhere, unilateral liberalization would produce as high benefits for the economy as a whole as multilateral liberalization, as the International Monetary Fund correctly argues (*Issues and Developments in International Trade Policy*, December 1988).

It is quite probable that European taxpayers could not continue for long to subsidize agricultural production, at the rate of two-thirds the European Community budget. Liberalizing our agriculture would rapidly force them to follow. In the meantime, any disruptive effect of their temporarily higher subsidies would be compensated by the increase in other exports from us which would be necessary to finance our higher imports of agricultural products. Moreover, it is by no means certain that free and productive producers can never undersell subsidized and lazy ones. Boeing still sells airplanes and often wins sales against subsidized Airbus. The adjustment potential of a free-market economy has been shown in the petroleum markets for the last 15 years.

The Real World, Today and Tomorrow

But the real world is what it is and, until understanding of the advantages of unilateral free trade has progressed, we may need institutions like GATT. For the collapse of multilateral trade negotiations under GATT probably would lead to all-around protectionism instead of declarations of unilateral free trade.

First best is multilateral free trade. Second best is unilateral free trade. Third best is institutions such as GATT. Worst is unchecked protectionism.

Provided it does not yield to managed trade, then, GATT serves a useful purpose for now. One advantage of such international organizations is to impose some discipline on national governments, to prevent them from complying too easily with demands of domestic pressure groups. Paradoxically, a club of producers' clubs can dampen local protectionist pressures.

But this short-run strategy shouldn't deter us from limiting more directly the powers and trade interventions of our own governments. No one would advocate that Western governments negotiate individual liberty with Communist countries: "If you do not free your subjects, we will enslave ours equally. . . ." But isn't this exactly what negotiating free trade amounts to in the economic realm? Let's consider the alternative of unilateral free trade. □

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A REVIEWER'S
NOTEBOOK

The Other Path

by John Chamberlain

In two trips to post-Allende Chile I skipped over Peru without a decent sight of Lima. But I've seen the shacks of squatters on the hillsides in back of Caracas in Venezuela and in the land around Santiago in Chile, and it is easy to visualize the same ring of unfinished tin and cardboard huts around Lima.

The shacks are illegally situated, but nobody does much to disturb them. For where else can propertyless people go except back to the country, where life is all too hard for a mere peasant field hand? The shacks around Lima belong to what Hernando de Soto, a Peruvian who runs a fact-finding agency called the Institute for Liberty and Democracy (ILD) calls the informal, as opposed to the formal, economy. This economy, which de Soto disdains to call black, is the natural response to an impossible situation of people who, quite understandably, refuse to die. The story of "the invisible revolution in the Third World" is ably told in de Soto's *The Other Path* (New York: Harper and Row, 271 pp., $22.95).

The older inhabitants of Lima, with legal businesses staked out and their own housing needs taken care of, don't welcome newcomers from the country, but they bow to *faits accomplis* when these come with impressive planning and power. De Soto tells how the invaders from the country move in to seize empty stretches of land on the Lima periphery. One evening there may be nothing stirring on the land. But, come morning, a whole group of invaders will have marked out their plots and set up the first approximations of scores of houses. Normally the police look on. The police know that the invaders represent a potential political power that they may have to reckon with some day.

The invaders speak of something they call an "invasion contract" based on "an expectant property right." De Soto's ILD found in 1985 that out of every 100 houses built in Lima, 69 were governed by the extra-legal system.

After the first seizure comes the long wait. There are 159 bureaucratic steps which residents must complete in order to legalize, or formalize, their settlement. The process of formalization takes an average of 20 years.

To start a legal business is almost as forbidding. First, there must come an adjustment of land. This takes 83 months to complete. The cost of an adjustment is $590.36, which is 15 times the monthly minimum wage. Sewage and water functions must be arranged for, and there must be access to transport, which is largely illegal. It takes 12 months to obtain documents that allow building to start. Studying cases, the ILD found that "the cost of access to formal markets, in terms of time, was an average of seventeen years, from the formation of a minimarket until the market proper comes into operation." The difficulties of building their own markets explains why so many people decide to become street vendors. Even when one has a legal, or formal, business going, 40 percent of an administrator's working hours are used up by bureaucratic procedures.

It is small wonder, then, that newcomers to Lima are inclined to say to hell with formal

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procedures. They choose "the other path." Their time is their own, though they may have to pay an occasional bribe. And their money is their own.

There are, however, certain costs of being informal. One is that the contracts between buyers and sellers are not enforceable in law. People must trust each other. Another cost is that credit to buy expensive machinery is hard to come by.

De Soto's theory is that Peru, and much of the rest of Latin America, is still living in the seventeenth and early eighteenth centuries, when the system of mercantilism governed business dealings. Mercantilist economies ultimately stagnated because, as de Soto puts it, "their elite entrepreneurs specialized in exploiting regulations which favored them over new methods of production." The changes in England came relatively peacefully as Parliament, impressed by Adam Smith, passed some good laws. In France there had to be a violent revolution followed by Napoleonic dictatorship. Napoleon's wars smashed mercantilist practices in most of Western Europe.

Michael Novak, Zbigniew Brzezinski, Senator Bill Bradley, and Jean François Revel are among those who are quoted on the jacket of *The Other Path*. Their laudatory comments are not surprising. What is surprising is to find Richard Nixon, who once imposed price controls, leading a chorus of praise for what Nixon calls "the clarion voice of economist Hernando de Soto, whose book. . . is a pivotal study of the extraordinary entrepreneurial dynamism of Peru's underground economy."

De Soto says of his book that there is nothing in it "that needs to be confirmed by complex laboratory experiments. You have only to open the window or step into the street." What you will encounter in the Lima streets besides the illegal bus lines are 91,000 street vendors who "maintain a little over 314,000 relatives and dependents." Besides the street vendors there are 39,000 proprietors of informal market stalls whose businesses are valued at $40 million. So it is really a misnomer to speak of Peru's "underground economy." It couldn't be more in the open. The "visibility" of it all mocks de Soto's own subtitle, "The Invisible Revolution in the Third World."

American readers of *The Other Path* will find it exciting enough even though de Soto tosses the names of unfamiliar Lima mayors and Peruvian military dictators and civilian presidents into his text with no effort to specify what they stood for individually. For native Peruvians who know their own history and have a detailed map of Lima in their heads the book must be incredibly exciting. □

ADVERTISING AND THE MARKET PROCESS: A MODERN ECONOMIC VIEW

by Robert B. Ekelund, Jr., and David S. Saurman

Pacific Research Institute for Public Policy, 177 Post Street, San Francisco, CA 94108 • 1988 • 212 pages • $29.95 cloth, $12.95 paperback

Reviewed by Robert W. McGee

Professors Ekelund and Saurman take the neo-Austrian view that advertising promotes human welfare by providing market information and lowering search costs. They see this view as a minority perspective, but one that is growing in popularity.

The majority perspective, espoused by Alfred Marshall, John Kenneth Galbraith, and others, sees advertising as wasteful at best and monopoly enhancing at worst. The authors show that the majority view of advertising is incorrect on several counts, and present one of the most thorough cases yet written for the neo-Austrian view. Rather than verging on the unethical and manipulative, advertising helps consumers to discover what goods and services are available.

The book starts with a foreword by Israel M. Kirzner, one of the leading exponents of Austrian economics. The first chapter traces the historical development of advertising and discusses the modern criticisms of mass marketing. As far back as the Middle Ages, advertising was regulated by government, which gave monopoly powers to those who were permitted to advertise. In France, for example, only town criers who were franchised by the government could advertise a Parisian tavern keeper's wine. In England, the advertising tax helped retard the spread of literacy because it made newspapers more scarce.

Where advertising has been unhampered, consumers have benefited and markets have been more open. Restrictive practices, on the other hand, have tended to help established producers at

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the expense of newcomers. Far from being a barrier to entry, advertising is one of the principal means by which new competitors can enter a market.

For example, before cigarette advertising was banned from television in 1970, an average of one new brand a year successfully penetrated the market. Between 1970 and 1974, no new brand was successfully introduced. The beneficiaries of the ban were the firms with established brands. The losers were the companies that couldn't introduce their products and consumers who never learned of the new products' existence.

The theories that advertising raises overall profits and increases concentration ratios also are dismantled by Ekelund and Saurman. (Concentration ratios measure the sizes of the leading firms in an industry, versus the size of the entire industry.) Unrestricted advertising makes it easier to enter markets, which leads to increased competition and lower prices.

Ekelund and Saurman offer some telling examples: When Mattel started advertising toys on the Mickey Mouse Club television show in the 1950s, some toy prices dropped by 30 to 40 percent in areas where advertising was relatively frequent, while prices remained relatively stable in areas where advertising was infrequent or nonexistent. The prices of eyeglasses are lower where eye doctors haven't been able to push through bans on commercial advertising. Legal services are cheaper where advertising is permitted. Unrestricted advertising also reduces the prices of drugs, gasoline, and numerous other products and services. There is even some evidence that the qualities of goods and services improve when restrictions on advertising are lifted.

The chief beneficiaries of advertising restrictions are established firms that already have a share of the market. They often defend these restrictions by claiming that advertising bans protect the consumer, who presumably isn't capable of making rational decisions. But as Ekelund and Saurman point out: "There is no validity in the notion that consumers can properly evaluate proposed national policies when selecting officeholders but are somehow unable to choose between and evaluate the merits of two different cans of beans."

Professor McGee teaches accounting at Seton Hall University.

ROBERT LEFEVRE: "TRUTH IS NOT A HALF-WAY PLACE"

by Carl Watner

The Voluntaryists, Box 1275, Gramling, SC 29348 • 1988 • 236 pages.• $14.95 paperback

Reviewed by K. E. Grubbs Jr.

Among libertarian philosophers, Robert LeFevre was *sui generis*, one of a kind. That is how the self-proclaimed autarchist would want to be remembered, of course: as an individualist who packed several careers into one life, and who made his mark on his times by teaching an ethical code defiant of the prevailing collectivism. Consider those careers. He had been a failed actor, a radio announcer, a struggling hotelier, an innovative television newscaster, a newspaper editor, and the founder and president of a small college.

I remember Bob, who died in 1986 at the age of 75, as the most stimulating lecturer I had ever heard, vastly more thought-provoking than my college professors. He vaguely resembled Mark Twain, and his wry humor could keep a class's attention for twelve hours a day, five days a week. Seriously. Freedom Newspapers, the nationwide media chain that employs me, would periodically send its editors through his course, which he called "The Fundamentals of Liberty." Uninitiates, hearing about the regimen, would imagine a scene from *A Clockwork Orange*: strapped into a chair, eyelids pinned back, attention fixed on the lecturer, who would ladle The Truth into the now-robotized participant's brain.

No such nightmare. Bob simply drew on his multitude of experiences as a communicator and sustained our keen interest. He never took any courses in educational methodology; indeed, he possessed no college degree. Had he such a credential, or had he suffered through the pedagogical techniques stressed in the teachers' institutions, his considerable capability would surely have been spoiled, his students reduced to snores.

As a teaching phenomenon, he awakened us to the competing natures of man and political government, the latter coercively hobbling all creativity in the name of some collective good. He explored the alternatives of voluntarism, even challenging us to imagine how seemingly necessary functions of the state could be conducted without taxation or force. Come on, we would

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think. Could interstate highways be constructed without taxpayers' money or the invoking of eminent domain? You bet they could, if we but disciplined our imagination and our morality. Such, of course, were the exercises of the ideological purist, but I daresay such kernels, planted back at "Freedom School," a.k.a. Rampart College, blossomed into the privatization movement of today.

It is well that someone should write a biography of this man, this exceedingly gentle man. (Bob was a pacifist, though he shunned the word.) One of his dedicated students, Carl Watner, has produced a biography, a project authorized by LeFevre himself, who cooperated by furnishing papers and an oral self-history. LeFevre also led Watner through several revisions before his death. Perhaps because the writer had such an unfree hand, *Robert LeFevre: "Truth is Not a Half-way Place"* suffers drastically.

Alas, if one wanted one's moral philosophy taken seriously, this is not the sort of introduction to it one would want published. Or so I should think. Though again, perhaps it is to Bob's credit (and I can well imagine him being so brutally honest with himself) that he wanted it all out, warts and all. Here is a man who spent about the first third of his life deeply involved in—or trying to extricate himself from—a truly odd religious cult, the "I Am" movement.

Bob, it seems, allowed a couple of peripatetic charlatans to explain, in terms of a gnostic formula that fueled their enterprise, some astonishing mystical occurrences that he had experienced in his early years. Somewhere in this world or the next, or both (if I have this right), there existed "masters" who possessed true wisdom; they possessed such wisdom by being in touch with "St. Germain," who benevolently guided the earnest seeker's life. Bob was an earnest seeker, indeed some thought a "master"; but he pursued "St. Germain" at the cost of considerable autonomy, becoming an acolyte of the "I Am" founders. It was not until he was nigh middle-aged that Bob was able to shake the mental tropisms of a cultist; he brought a small circle of his followers, mostly female, into the freedom movement with him.

Then there were the touching romances and the messy divorces, not just his own but that of a fellow cultist he'd promised to marry, and then didn't, if she would obtain her own divorce. And there were the philosophical squabbles and the broken friendships or estrangements with other libertarian leaders, among them Leonard Read, F. A. Harper, and R. C. Hoiles. Winningly and charmingly, Bob would allow that these unhappy developments made him learn and grow. Perhaps so, perhaps not.

Read tried to warn him that funding for his venture in the Colorado mountains, Rampart College, would suffer unless he eschewed his more extremist tendencies, which looked awfully like anarchism (a word Bob really eschewed, in favor of the more curious "autarchism," which some dictionaries define both as "self-sufficiency" and "despotism"). Bob pressed on, refusing to compromise his belief that all coercion, both initiated and defensive, is immoral. When Read, embracing the necessity of defensive force, wrote his *Government: An Ideal Concept* (an eminently sensible book, by the way), LeFevre reacted as if it were the height of naivete. Harper, who agreed with him on the impossibility of an ideal government, would eventually turn down a leadership role at Rampart College—where such luminaries as Milton Friedman, Frank Chodorov, and Rose Wilder Lane lectured—for fear that it would damage his academic standing.

The most troubling break of all was with R. C. Hoiles, the patriarch of Freedom Newspapers whose son, Harry, publisher of the Colorado Springs *Gazette-Telegraph,* hired Bob as his editorial page editor. LeFevre happened on one occasion to be staying at R. C.'s Santa Ana, California, home when out of the blue (in Watner's version) the senior Hoiles, using some stern language, threw him onto the street. Harry, who to his father's disappointment had accepted Bob's arguments against the death penalty, assured the stunned LeFevre of continued employment (later conferring on Bob the title of editor-in-chief).

Here Watner dabbles, ever so briefly, in psycho-biography. He speculates that R. C., to whom a close-knit family was sacrosanct, simply could not abide the intellectual power Bob seemed to exert over Harry. Hence the explosiveness of R. C.'s encounter with LeFevre. I have known (and admired) all three men, and I suspect there was more to this rocky event. R. C., in addition to being a pioneer in the libertarian movement, was a savvy businessman; I think, in his dealings with LeFevre, he smelled a poseur, at least suspected one. And R. C. did believe gov-

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ernment could be an agent of defensive force. Bob, philosophically at least, would treat the most heinous criminal as a Hindu would a cow.

The story tells us much about the nature of wisdom and the nature of ideology. For all his unbending (some say dogmatic) morality, you always got the sense that R. C. Hoiles was thinking, forever re-examining his positions, right up to his death in his nineties. In Bob LeFevre's case, you could sense sometimes an evasiveness (even though he encouraged questions during his lectures), a promotion of the idea that he had sorted out a complete, non-contradictory belief system, case closed. If I might myself dabble in psycho-biography, it is possible Bob carried over this variation of gnosticism from his "I Am" days, unconsciously setting himself up as a cult leader.

Still, Bob was if anything politically liberating. To his resumé one must add disappointed politician, for he once ran, in a Republican primary election for Congress, against Richard Nixon. He felt the mud slung at him and left political activism forever, prompting some to connect his antagonism to politics to a psychological source. But he also contended, compellingly, that political attempts to regulate behavior, whether from the left or the right, were equally destructive.

"Left and right," he would chuckle, "are but two wings on the same bird of prey." Surely, it hardly matters to a victim of torture if his tormentor is a lieutenant of Pinochet or a minion of Gorbachev. And attempts to regulate personal behavior in the interest of traditional morality can be as counter-productive as regulation of economic behavior.

A useful metaphor, this bird of prey, but it is ultimately specious because so symmetrical a view of history seldom occurs in reality. It is like the guy who always answers "Fifty-fifty" when you ask about the odds of rain. Anyway, the left wing may well be flapping with vastly more force and velocity than the right wing, as indeed it seems to be doing in the late 20th century. I don't know if Bob really understood that.

Where Bob was fundamentally liberating was in helping us to fathom that man is, by nature, a volitional creature, and that attempts to substitute political decision-making for individual choice would always come a cropper. Where Bob might have been deficient was in the spiritual realm, a stuntedness that might have grown out of his miseducation in the "I Am" movement. He rightly twitted the atheists because, as he would point out logically, negatives cannot be proved. But he would settle on describing himself as either an agnostic or, curiously, a deist.

I well remember a poignant essay Bob wrote, in his *LeFevre's Journal*, on the passing of his longtime friend Ruth Dazey. She had been with him since the "I Am" days and had recently gone in for more orthodox enthusiasms, concerning which he wrote approvingly. Still, he held back—sophistically, I thought. I sent him two books, Malcolm Muggeridge's *Jesus Rediscovered* and J. B. Phillip's *Your God Is Too Small*, with the thought that they might reach into his iconoclastic heart.

In what seemed like the next mail, I received what I thought would be a gracious, multi-paged letter. Alas, it was neither acceptance nor rebuttal, but the same old skeptical territory covered, as it were, by someone who wanted to keep the case closed. Watner's book gives us few clues about that dimension of Bob's life, perhaps at Bob's insistence. My contacts with Bob after that were not so engaged, and I subsequently went off to Washington, D.C., the heart of the monster, where I was when I learned of his death. In a Georgetown restaurant I ran into a friend who had also been through one of Bob's courses, a decade and a half earlier, and who had ignored Bob's injunction against government activism by going to work in the White House.

"I hope he made it," my friend said fondly. Indeed, I hope he has more enriching company than "St. Germain." □

K. E. Grubbs Jr. is editorial and commentary director of the Orange County (California) Register.

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The ideal of freedom is to let anyone do anything he pleases, as long as his behavior is peaceful, with government empowered to keep the peace—and nothing more. An ideal objective, true, but one that must be pursued if we would halt the continuing descent of our society from bad to worse. Nothing short of this will suffice. And unless we fully understand the ideal—and what makes for its attainment—we'll tend to settle for powerless, futile little pushes and shoves that yield no more than a false sense of something done.

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